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Nos. 03-1230 and 03-1234

Supreme Court, U.S.
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In The

Supreme Court of the United States

AMERICAN TRUCKING ASSOCIATIONS, INC.
AND USF HOLLAND, INC.,

Petitioners,

v.

MICHIGAN PUBLIC SERVICE COMMISSION, *et al.*,

Respondents.

MID-CON FREIGHT SYSTEMS, INC., *et al.*,

Petitioners,

v.

MICHIGAN PUBLIC SERVICE COMMISSION, *et al.*,

Respondents.

On Writ Of Certiorari To The Michigan Court Of Appeals

JOINT APPENDIX

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Court of Claims
Docket No. 95-15631-CM

Troy Cab, Inc., *et al.* vs. State of Michigan, *et al.*

January 9, 1995	Complaint
February 21, 1995	Motion to Intervene of American Trucking Associations and TNT Holland Motor Express
April 26, 1995	Order of Reassignment from Judge Brown to Judge Giddings and consolidating the file and all future pleadings in Docket No. 95-15628-CM
May 2, 1995	Case reassigned from Judge Brown to Judge Giddings

State of Michigan
Court of Claims
Docket No. 95-15628-CM

Westlake Transportation, Inc., *et al.* vs.
Michigan Public Service Commission, *et al.*

January 3, 1995	Complaint
February 15, 1995	Amended Complaint
February 21, 1995	Motion to Intervene and Complaint of American Trucking Associations and TNT Holland Motor Express
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March 24, 2000	Claim of Appeal to the Michigan Court of Appeals filed by Plaintiffs Westlake Transportation and Troy Cab, *et al.*
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Michigan Court of Appeals/Supreme Court
Court of Appeals Case Nos.
226052; 226122; 226053; 226137
Supreme Court Case Nos. 123562-5; 123566-7

Westlake Transportation, Inc., *et al.* vs.
Michigan Public Service Commission, *et al.*

March 21, 2000	Claim of Appeal filed by Westlake Transportation and Troy Cab, *et al.*
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March 11, 2003	Michigan Court of Appeals Opinion – judgment affirmed
April 1, 2003	Applications for Leave to Appeal to the Michigan Supreme Court filed by Westlake Transportation and Troy Cab, *et al.* and American Trucking Associations and TNT Holland Motor Express

January 3, 2004	Orders denying leave to appeal to the Michigan Supreme Court
March 8, 2004	Notice of Docketing Petitions for Writ of Certiorari in U.S. Supreme Court Nos. 03-1230 and 03-1234

STATE OF MICHIGAN

IN THE COURT OF CLAIMS

WESTLAKE TRANSPORTATION, INC., VAN DER KOOI CARRIERS, INC., PRISM TRUCKING, INC., BESTWAY EXPRESS, INC., GERIG'S TRUCKING & LEASING, INC. and MYRIAH, INC., individually and on behalf of all others similarly situated,

Plaintiffs,

and

AMERICAN TRUCKING ASSOCIATIONS, INC. and TNT HOLLAND MOTOR EXPRESS, INC.,

Intervening-Plaintiffs,

v

MICHIGAN PUBLIC SERVICE COMMISSION, its COMMISSIONERS, JOHN G. STRAND, RONALD E. RUSSELL and JOHN L. O'DONNELL, MICHIGAN DEPARTMENT OF TREASURY and its STATE TREASURER and the STATE OF MICHIGAN,

Defendants.

_____/

File No. 95-15628 CM
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AFFIDAVIT OF THOMAS R. LONERGAN

Thomas R. Lonergan, states the following:

1. I am Director of the Motor Carrier Regulation Division, Michigan Public Service Commission, the address being 1048 Pierpont, Suite 4, Lansing, Michigan 48909.

2. The Motor Carrier Regulation Division, pursuant to Article IV of the Motor Carrier Act, collects the fees which plaintiffs allege are unlawful, the intrastate vehicle fee, MCL 478.2(1) and the interstate vehicle fee, MCL 478.2(2). Payment of these fees result in the issuance by the MPSC of a vehicle specific decal which is displayed on the door of each vehicle.

3. The intrastate vehicle fee of $100 is required for all vehicles used in the motor carrier's intrastate operations regardless of what state or Canadian province the vehicle may be commercially registered or licensed by the equivalent of the Michigan Secretary of State. The interstate vehicle fee of $100 is required only if the vehicle is commercially registered and licensed by the Michigan Secretary of State. The vehicle decal is identical in appearance for both intrastate and interstate vehicles (See attachment of photocopy). If the vehicle is used in both intrastate and interstate operations, only one decal and one fee payment is required.

4. I have had prepared, by staff members under my supervision, a review of the fees paid by the plaintiffs in this action to the Michigan Public Service Commission for the calendar years 1992, 1993, 1994 and 1995. This data has been gathered from Commission records as of March

17, 1995. The results of this review are contained in the following paragraphs.

5. Bestway Express, Inc. has held no Michigan intrastate authority during the years 1992-1995. It has paid no $100 vehicle decal fees for intrastate operations during the years 1992-1995. It has paid no $100 vehicle decal fees for interstate operations utilizing Michigan registered vehicles.

6. Gerig's Trucking and Leasing, Inc. has held no Michigan intrastate operating authority during the years 1992-1995. It has paid no $100 vehicle decal fees for intrastate operations during the years 1992-1995. It has paid no $100 vehicle decal fees for interstate operations utilizing Michigan registered vehicles.

7. Westlake Transportation, Inc. has held Michigan intrastate operating authority for each of the years 1992-1995. It has paid the following amounts for $100 vehicle decal fees for intrastate operation during the years 1992-1995:

1992 –	$100	1994 –	$4,750
1993 –	$3,800	1995 –	$4,900

Westlake has paid no $100 vehicle decal fees for interstate operations utilizing Michigan registered vehicles.

8. Van Der Kooi Carriers, Inc. has held Michigan intrastate operating authority for each of the years 1992-1995. It has paid the following amounts for $100 vehicle decal fees for intrastate operation during the years 1992-1995:

1992 –	$900	$1994 –	$900
1993 –	$700	$1995 –	$300

Van Der Kooi has paid no $100 vehicle decal fees for interstate operations utilizing Michigan registered vehicles.

9. Prism Trucking, Inc. held no Michigan operating authority in 1992 or 1993. It has held Michigan operating authority since 1994. It has paid the following amounts for $100 vehicle decal fees for intrastate operations during the years 1992-1995.

1992 –	0	1994 –	$200
1993 –	0	1995 –	$500

Prism has paid no $100 vehicle decal fees for interstate operations utilizing Michigan registered vehicles.

10. TNT Holland Motor Express, Inc. has held Michigan intrastate operating authority for each of the years 1992-1995. It has paid the following amounts for $100 vehicle decal fees for intrastate operations during the years 1992-1995:

1992 –	$118,272	1994 –	$148,700
1993 –	$135,513	1995 –	$117,220

TNT Holland has paid no $100 vehicle decal fees for interstate operations utilizing Michigan registered vehicles.

11. Myriah, Inc. held no Michigan intrastate operating authority in 1992, 1993 or 1994. It acquired Michigan operating authority in January of 1995. It has paid the following amounts for $100 vehicle decal fees for intrastate operations during the years 1992-1995:

1992 –	0	1994 –	0
1993 –	0	1995 –	$500

Myriah has paid $100 vehicle decal fees for interstate operations utilizing Michigan registered vehicles in the following amounts:

1992 –	$300	1994 –	$100
1993 –	$100	1995 –	0

12. El Toro Motor Freight, Inc. held no Michigan intrastate operating authority in 1992, 1993 or 1994. It acquired Michigan operating authority in February of 1995. As of March 17, it had paid no $100 intrastate vehicle decal fees for 1995, nor had it paid any in 1992, 1993 or 1994. El Toro has paid $100 vehicle decal fees for interstate operations utilizing Michigan registered vehicles in the following amounts:

1992 –	$1,773	1994 –	$1,979
1993 –	$2,860	1995 –	$3,200

13. All of the fees mentioned in the preceding paragraphs #4 through 11 are in increments of $100.00. Partial year (six months or less) decals may also be purchased for $50.00 In the preceding paragraphs, some revenue amounts are in irregular amounts. These dollar amounts were extracted from state accounting records but apparently include occasional errors, either in recording information or in posting revenue to the wrong accounts.

14. A motor carrier does have a choice as to the state in which it may wish to commercially register its vehicles. For example, some motor carriers based in Michigan may register their trucks in Illinois. But, in any event, an individual vehicle will receive license plates from only one State. Therefore, it would not be possible for an individual truck to pay multiple fees if the fee is applied based upon the state of vehicle licensure.

15. In the fiscal year 1993-94, the decal fee revenue collected pursuant to MCL sections 478.2(1) and 478.2(2) was $3.65 million. Total motor carrier fee revenue collected by the MPSC from all sources was $6.25 million, including $2.1 million collected from the $10.00 interstate vehicle fee, section 478.7(4). The distribution of this revenue is via appropriations by the Michigan legislature to the Department of Commerce, the Public Service Commission, the Michigan State Police and the Michigan Truck Safety Commission in the following amounts for fiscal 1993-94:

State Police	$2.63 million
Department of Commerce	$566 thousand
Public Service Commission	$2.16 million
Truck Safety Commission	$766 thousand

These revenues are utilized by the respective agencies for economic, insurance, and safety regulation of the Michigan trucking industry, safety education programs, and for enforcement of both the Michigan Motor Carrier Act and the Michigan Motor Carrier Safety Act, MCL 480.11 et al. Examples of safety enforcement include traffic enforcement such as speeding, vehicle inspections, alcohol and drug testing enforcement, hazardous materials, oversize and overweight enforcement and driver log book enforcement. The Motor Carrier Division of the State Police was, until 1982, a part of the Public Service Commission. When this division was transferred to the State Police by Executive Order 1982-1, funding support from PSC revenues sources was continued to the present time. The safety regulation responsibilities are applied equally to intrastate and interstate motor carriers while the economic regulation responsibilities apply primarily to intrastate

motor carriers, although the MPSC does have responsibility for insurance compliance by interstate motor carriers based in Michigan. It has been estimated that of the funds provided to the State Police prior to January 1, 1995, in excess of 90% has been used for safety enforcement and less than 10% for economic regulatory enforcement. In the Motor Carrier Regulation Division of the PSC prior to January 1, 1995, approximately 43% was spent for economic regulation, 25% for safety and insurance compliance and 32% for revenue collection. After January 1, 1995, this expenditure pattern has begun changing as some economic regulation will phase out. The result will be a reallocation of funding to safety purposes or a fee reduction if implemented by the legislature.

16. Paragraph #9 of Van Der Kooi's affidavit filed with Westlake's motion for class certification (and in similar statements in each of the other six affidavits) suggests that Michigan's interstate fee system could be adopted nationwide resulting in multiple fees. Note that the Michigan's interstate fee system is only applied to vehicles commercially licensed in Michigan. Even if every state adopted the same system, an individual motor carrier would pay the fee only once, in the state in which it voluntarily becomes commercially licensed.

17. Paragraph #6 of Myriah's and El Toro's affidavits indicates that they paid $100 interstate decal fees for each of its vehicles used exclusively for interstate transportation. Myriah and El Toro could have avoided those fees by registering its vehicles in another state.

/s/ Thomas R. Lonergan
Thomas R. Lonergan

Subscribed and sworn to before me
this 23rd day of March, 1995.

/s/ Carol Ann Dane
Carol Ann Dane, Notary Public
Eaton County, Michigan
My Commission Expires: 05/05/96

STATE OF MICHIGAN

IN THE COURT OF CLAIMS

WESTLAKE
TRANSPORTATION, INC.,
et al,

Plaintiffs,

v

MICHIGAN PUBLIC
SERVICE COMMISSION,
et al,

Defendants. /

File No. 95-15628 CM
Hon. James R. Giddings

TROY CAB, INC., et al,

Plaintiffs,

v

MICHIGAN PUBLIC
SERVICE COMMISSION,
et al,

Defendants. /

File No. 94-15631 CM
Hon. James R. Giddings

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AFFIDAVIT OF THOMAS R. LONERGAN

Thomas R. Lonergan, being first duly sworn, deposes and says as follows:

1. Affiant is the Director of the Motor Carrier Regulation Division of the Public Service Commission, Michigan Department of Commerce, and has held this position for approximately nine years.

MOTOR CARRIER ACT

2. The Motor Carrier Regulation Division (MCRD) is responsible for assisting the Commission in the administration of the Michigan Motor Carrier Act, 1933 PA 254, as amended, MCL 475.1, et *seq*, the title to which begins as follows:

"AN ACT *to promote safety upon and conserve the use of public highways* of the state; . . . ". (Emphasis added).

3. The titled purpose of promoting safety upon and conserving the use of public highways is restated in the purpose and policy section of the Act, MCL 475.2, which in pertinent part states as follows:

> "It is hereby declared to be the purpose and policy of the Legislature in enacting this law to confer upon the Commission the power and authority and to make it its duty to supervise and regulate the transportation of property by motor vehicle for hire upon and over the public highways of this state in all matters whether specifically mentioned herein or not, so as to: . . . (b) *protect and conserve the highways and protect the safety and welfare of the travelling and shipping public in their use of the highways*;. . . . " (emphasis added)

4. The motor carrier transportation industry provides a public service, but also increases the risk of harm to the traveling public and damage to the public highways. The transportation by motor vehicle for hire is a commercial enterprise for profit which utilizes the public highways in conjunction with the travelling public. Since motor vehicles for-hire increase the risk of harm to those using the highways as well as the cost of maintaining those highways, the Motor Carrier Act requires motor carriers to pay their share of the costs associated with promoting safety upon and conserving the public highways through regulating motor carriers' use of the highways and assessing certain privilege fees and taxes.

5. The title to the Motor Carrier Act provides for the collection of fees and taxes from motor carriers to promote the highway safety and conservation purposes of the Motor Carrier Act as follows:

> " . . . To provide for the levy and collection of certain privilege fees and taxes for such carriers *for such purposes* and the disposition of such fees and taxes; . . . ". (Emphasis added).

6. The Motor Carrier Act, also provides for the regulation of price, route and service of motor carriers for-hire. The title of the act in pertinent part states as follows:

> " . . . to give the Commission jurisdiction and authority to fix, alter, regulate and determine rates, fares, charges, classifications, and practices of common motor carriers for such purposes; to require filing with the Commission of rates, fares and charges of contract carriers and to authorize the Commission to prescribe minimum rates, fares, and charges, and to require the observance thereof; to prevent unjust discrimination; . . . "

7. The regulation relating to price, route and service are also provided for in the purpose and policy section of the act, MCL 475.2 which in pertinent part states as follows:

> "(d) Meet the needs of motor carriers, shippers, or receivers, and consumers; (e) allow a variety of quality, price, and service options to meet changing market demands and the diverse requirements of the shipping public; (f) allow the most productive use of equipment and energy resources; (g) provide the opportunity for efficient and well-managed motor carriers to earn adequate profits and attract capital; . . . (i) prevent unjust discrimination; . . . (k) provide and maintain service to small communities and small

> shippers; . . . (m) promote entrepreneurship in the motor carrier industry by allowing greater contract carrier economic and entry flexibility; . . . "

The Motor Carrier Act was also designed to stabilize the industry by limiting entry and regulating rates, routes and services so as to assure quality transportation services to the public, and promote safety upon and conservation of the public highways. Since January 1, 1995 the Motor Carrier Division of the Michigan Public Service Commission has not enforced any of the laws or regulations relating to the price, route or service of a motor carrier.

8. A partial legislative history of Michigan motor carrier regulation includes the following significant events:

a. 1933 Passage of P.A. 254, Michigan Motor Carrier Act

b. 1963 Passage of P.A. 181 Motor Carrier Safety Act, jurisdiction assigned to the Public Service Commission. No funding provided.

c. 1966 PA 162 amends Motor Carrier Act to repeal levy of weight-distance tax on motor carriers, substitutes per vehicle annual fee of $50.00 and application fee of $20.00

d. 1982 PA 354 amends the Motor Carrier Act. Partial deregulation, collective ratemaking authorized, fee increases to improve regulation and enforcement:

application fee	$20 to $100
annual decal fee	$50 to $100

e. 1982 Executive Order 1982-1 transfers jurisdiction of Motor Carrier Safety Act and the PSC enforcement division to the State Police. Funding continues to be provided from PSC generated motor carrier fees.

f. 1988 PA 347 requires interstate motor carriers to register ICC authority and pay $10 per vehicle fee. To be effective 1/1/90.

g. 1991 Public Law 102-240 "Intermodal Surface Transportation Efficiency Act of 1991" mandates state participation in the "Single State Registration System" to be effective 1/1/94.

h. 1993 PA 352 amends to Motor Carrier Act to further deregulate; requires PSC to develop a safety rating system.

i. 1994 Public Law 103-305 "Federal Aviation Administration Authorization Act of 1994." Sec 601 preempts certain state and local authority for economic regulation of motor carriers.

INTERSTATE VERSUS INTRASTATE COMMERCE

9. Regulation of the motor carrier industry in this nation has traditionally involved a dual system of federal and state regulation. The Interstate Commerce Commission regulates interstate motor carrier transportation while state regulation of intrastate commerce has been preserved. Pursuant to 49 USC § 10521 (***Exhibit A***) the general jurisdiction of the Interstate Commerce Commission over transportation by motor carriers is defined, and thus leaves the states to regulate intrastate operations involving a pickup and delivery of property in the same state without a prior or subsequent movement through another state.

10. Historically, the Interstate Commerce Commission has regulated motor carriers operating in interstate commerce in a similar fashion to the way the Michigan Public Service Commission has regulated motor carriers operating in intrastate commerce. Certificates of authority to conduct operations, together with tariffs covering rates,

routes and services have been provided by the ICC for interstate operations and the MPSC for intrastate operations. The Michigan Motor Carrier Act requires interstate carriers to comply with the Michigan Motor Carrier Act, except to the extent the Act is inconsistent with or contravenes federal law. See MCL 476.12, MCL 477.10 and MCL 478.7. The MPSC regulates the for-hire transportation of property by motor carriers which move wholly within the state (intrastate). If the property to be transported is to be moved by the owner of the property in motor vehicles owned or leased by the owner of the property, then the movement is private carriage, not regulated by the MPSC or the ICC. Otherwise, the for-hire transportation of property intrastate requires a motor carrier to obtain MPSC operating authority.

11. According to the 1993-1994 NARUC compilation of transportation regulatory policy (***Exhibit B***) 45 states and U.S. Territories have some form of regulation of common carriers. The vast majority of these states and territories also regulate insurance (45 states), safety (33 states) as well as the registration of interstate carriers (37 states). Thirty-nine states (39) also assess a fee for intrastate registration of motor carrier operations. Thirty-two (32) states or territories (32) utilize an identification device for vehicles such as a decal or stamp. A few states also regulate private carriers.

MOTOR CARRIER FEE SYSTEM

12. Article 4 of the Michigan Motor Carrier Act, MCL 478.1 through MCL 478.8 provides for the collection of certain fees referred to in the title of the Act to carry out the Act's purposes. Of all the motor carrier fees collected, approximately half go to the Department of State Police for safety enforcement of the motor carrier industry. The

remainder is used by the MPSC and the Michigan Department of Commerce for the administration of the Motor Carrier Act which includes enforcement of safety, financial fitness and insurance requirements for motor carriers.

13. The intrastate authority application fee at MCL 478.1 is paid by an applicant for an *intrastate* MPSC certificate. An interstate motor carrier would not pay this fee. The fee is $100 for the original application and $50.00 for the annual renewal. This fee amount has remained the same since 1982. Prior to the 1982 amendments to the act, the application fee was $20.00 and the renewal fee $10.00. The application process involves several steps including checking the completeness of the application, performing a safety review of the applicant, publishing a notice of the application in the bulletin, and preparing a file for Commission consideration. In the event of a protest, a hearing is also scheduled. Prior to January 1, 1995, oral testimony or written affidavits were also required regarding the public need for the services. The renewal requires a vehicle update and proof of insurance along with payment of fees. The intrastate application fees and renewal fees generate approximately $200,000 per year in revenue which is merged with other motor carrier fee revenues and appropriated to the Public Service Commission, Department of Commerce and Michigan State Police. Any unexpended balances are deposited in the Michigan Transportation Fund at the end of the fiscal year. In fiscal year 1993-94, the PSC collected $224,000 in PSC application fees.

14. A motor carrier obtaining intrastate authority must also determine the vehicles which it will assign to intrastate transportation. A list of the equipment providing intrastate services is furnished with the original application or renewal application. An example of such a

listing is attached as ***Exhibit E***. A carrier also pays the $100 annual fee relating to his intrastate authority for each vehicle pursuant to MCL 478.2(1). The carrier itself selects which self-propelled power units and how many units, relate to provision of intrastate authority and makes the requisite payment relating to said vehicles. The MPSC Staff does not determine how many units, or which units, are used for intrastate authority. This is a matter solely determined by each carrier a good faith basis, without review by the MPSC Staff. Each carrier makes a determination concerning what portion of their vehicle fleet should be apportioned or allocable to Michigan intrastate authority based upon his own operations, business determinations, and factors which are relevant to his own business circumstances or situation. Neither the MPSC Staff nor the MPSC have undertaken any complaint or other enforcement action relating to second guessing or challenging the vehicle fees paid by a carrier utilizing each carrier's own judgment as to the portion of its fleet to be used for intrastate operations in Michigan based upon its own business circumstances.

15. The intrastate annual vehicle decal fee found at MCL 478.2(1) is paid after an intrastate motor carrier has obtained an MPSC motor carrier certificate. Before the carrier commences operations under its certificate, it must purchase a decal for each power unit at a fee of $100 each. This decal identifies that the carrier has paid its fee and is affixed to the door of the vehicle. A six-month decal is also available after July 1 for $50.00. Each calendar year the decals must be replaced. A household goods carrier only pays a $50.00 annual fee. These fees have remained the same since 1982. Prior to that time the fee was $50.00 except for household goods carriers which paid $20.00. Prior to 1966, the Commission collected a weight/distance tax rather than a per vehicle fee. This fee, MCL 478.2(1),

is the largest source of revenue for the Public Service Commission motor carrier regulation functions and also supports the State Police Motor Carrier Division, which until 1982 was part of the PSC. These fees support State Police enforcement of the Motor Carrier Act, Motor Carrier Safety Act, size and weight limitations, enforcement of the Vehicle Code and other laws governing commercial motor vehicles and motor carriers. In calendar year 1994, the PSC collected approximately $2,905,000 in intrastate vehicle decal fees.

16. The interstate annual vehicle decal fee found at MCL 478.2(2) is paid by an interstate motor carrier only on vehicles registered and plated through the Michigan Secretary of State. The Commission has always interpreted vehicles "registered in this state" as meaning registered and license plated with the Secretary of State. An interstate carrier which registers its vehicles in any other state or province does not pay this fee. The fee is $100.00 per calendar year per vehicle or $50.00 after July 1. A decal identical to the intrastate decal is issued and affixed to the door of the vehicle. This fee has remained the same since 1982. It was $50.00 from 1966 to 1982. These fees amounted to approximately $751,000 in 1994. The revenue from these fees is combined with other motor carrier fee revenue and appropriated by the Legislature for expenditure by the PSC and the State Police Motor Carrier Division. These fees support enforcement of the Motor Carrier Act, Motor Carrier Safety Act, Michigan Vehicle Code, size and weight regulation, and other laws governing commercial vehicles and motor carriers. Since 1966, the fees paid by intrastate PSC regulated motor carriers and interstate motor carriers commercially registered in Michigan have been identical. The fees levied on interstate motor carrier vehicles commercially registered in other states are covered by MCL 478.7 and are a

maximum of $10.00. For fiscal year 1993-1994 the Commission collected $2,235,000 pursuant to MCL 478.7(4).

17. The federal single state system of registration, providing for a $10 fee for registering federal authority in each state, is established under the federal sphere of regulation of interstate transportation under the Interstate Commerce Act of 1980 as amended, as the exercise of the federal portion of jurisdiction under the dual nature of state/federal regulation of motor carrier transportation. The separate intrastate fees collected by Michigan and most other states relate to intrastate transportation and the exercise of the states powers relative to the state portion of the dual federal-state jurisdictional system. The intrastate fees collected by the state should not be confused with the single state registration system adopted for the separate federal system.

18. The annual renewal fee collections (478.1) as well as the various annual vehicle fees collections (478.2(1), 478.2(2) and 478.7) for the plaintiffs as well as a sample of large motor carriers that operate in Michigan for the years 1993, 1994 and 1995 are attached as ***Exhibit C***. This data demonstrates the diversity of types and amounts of fees paid by the plaintiffs and others. The motor carriers make various business decisions that impact the amount of fees. These decisions involve the location of the principal place of business, the state in which the carrier chooses to register its vehicles and whether or not the carrier has obtained an intrastate certificate.

19. The Legislature expected that motor carriers with a close nexus to Michigan (vehicles operating in intrastate commerce with MPSC authority or vehicles plated in Michigan) would pay fees for the administration of the Motor Carrier Act, the purposes of which are to

promote safety, conserve highways and economically regulate the industry. Michigan motor carrier fees under MCL 478.1 and MCL 478.2 are not paid by motor carriers engaged in interstate commerce on vehicles plated in another state. The rationale for charging interstate vehicles plated in Michigan a fee, under MCL 478.2(2), and not charging interstate vehicles plated in another state is a fee that vehicles which are license plated in Michigan are based in Michigan, and therefore have a greater utilization of the highways and services in Michigan than do vehicles plated in another state. Different states collect various fees and taxes from motor carriers in different combinations and in significantly different amounts. See ***Exhibit B*** for a chart which shows fuel taxes, truck and trailer registration and other fees (including motor carrier fees such as Michigan's decal fees). Many of these fees apply to both intrastate and interstate motor carriers and motor vehicles.

SINGLE STATE REGISTRATION

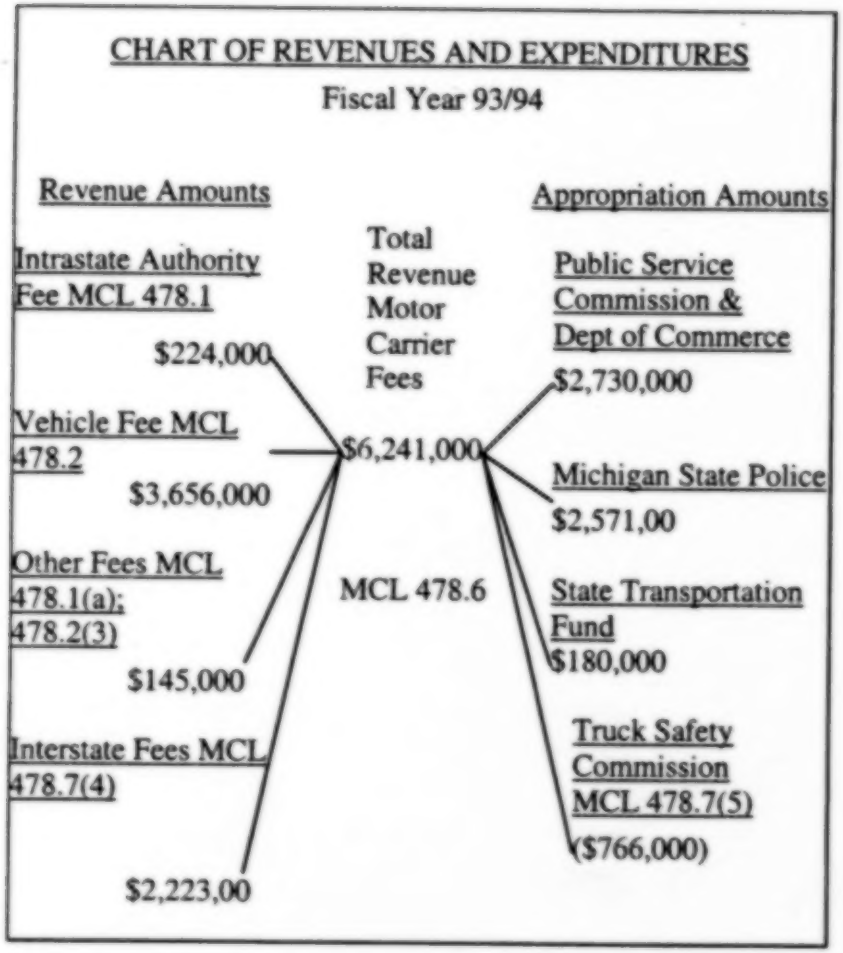
20. The Single State Registration system, to which the $10 fee applies, relates to filing of interstate ICC authority and proof of insurance with each state for each vehicle operating in interstate commerce to enable states to enforce ICC requirements. It does *not* relate to the state registration requirements for registration, authorities, license plates, etc. which may be applicable to intrastate operations or those interstate vehicles or operations having a close nexus to the state. The ICC has none of its own police officers or enforcement people to enforce ICC requisite requirements and relies on the states for this purpose under the SSRS system. Congress allows the states to require motor carriers operating with interstate authority to register their ICC certificate or permit before

commencing operations within that state and has specifically found that such registration is not an unreasonable burden on transportation when registration is completed under the standards of the single-state-registration system found at 49 USC § 11506. Under the single state registration system, an interstate motor carrier is required to register annually with only one state by filing its ICC certificate or permit and proof of insurance along with the payment of a fee for each participating state not to exceed $10.00 per vehicle which the motor carrier admits will operate in each participating state.

21. Michigan is a participating state in the single state registration system and pursuant to the Michigan Motor Carrier Act, MCL 478.7(4), levies an annual fee of $10.00 or less on each interstate motor carrier vehicle operated in Michigan. In the fiscal year 1993 to 1994 Michigan collected approximately $2,223,000 in interstate registration fees under MCL 478.7(4) and consistent with the requirements of MCL 478.7(5), $766,000 of those fees collected were deposited with the Truck Safety Fund and utilized for safety education programs for motor carriers and Michigan State Police safety and enforcement purposes.

REVENUE COLLECTED FROM MOTOR CARRIER FEES

22. The following chart shows revenue collected and expenses for fiscal year 1993-1994 for motor carrier fee under the Michigan Motor Carrier Act, 1933 PA 254:



As is evident from the above chart, the total amount of regulatory fees collected under the Motor Carrier Act are closely matched to the State of Michigan's cost of regulating motor carriers to carry out the purpose of the Act.

APPROPRIATIONS FOR SAFETY

23. The safety purposes of the Michigan Motor Carrier Act, 1933 PA 254, are carried out in part by the PSC which administers the following safety functions:

a. A MPSC certificate is issued to a motor carrier only after a safety review consistent with requirements set by the Commission in Order T-1281.

b. A certificate may be revoked or suspended for unsafe operations.

c. Regulatory compliance with state and federal vehicle and driver regulations through the certificate process.

d. Regulatory compliance with insurance coverage requirements.

24. Prior to 1982, the Michigan Public Service Commission utilized its own enforcement division to carry out safety inspections, traffic enforcement, safety audits and the operation of scale sites for motor carriers. In 1982, Governor Milliken transferred by Executive Order 1982-1, the PSC Enforcement Division to the Department of State Police along with the responsibility and funding for enforcement of the Motor Carrier Safety Act, 1963 PA 181. Under the Motor Carrier Safety Act, the Motor Carrier Division of the State Police is responsible for the following safety functions:

a. Vehicle requirements such as brakes, load securement, inspections, etc. are specified and enforced.

b. Driver requirements such as hours of service, licensing, medical certificates, etc. are specified and enforced.

c. Drug and alcohol testing requirements are enforced.

d. Safety inspections and audits are conducted.

e. Regulates movement of hazardous materials.

25. Approximately half of all Michigan motor carriers fees collected are appropriated by the Legislature to the Motor Carrier Division of the Department of State Police for safety enforcement and inspections of motor carrier vehicles. Title XII of Public Law 99-570, 49 CFR Federal Motor Carrier Safety Regulations are administered by the Federal Highway Administration of the U.S. Department of Transportation. Through agreements with the State of Michigan, the Motor Carrier Division of the State Police also enforces the federal requirements which in pertinent part include the following:

a. Requires uniform commercial drivers license.

b. Specifies vehicle and driver requirements.

c. Establishes drug and alcohol testing requirements.

d. Specifies accident reporting requirements.

e. Regulates transportation of hazardous materials.

f. Establishes a motor carrier safety rating system.

PREEMPTION OF PRICES, ROUTES AND SERVICE

26. On August 23, 1994, President Clinton signed into law the Federal Aviation Administration Authorization Act of 1994 (FAAA Act), amending Title 49 USC § 11501, which took effect on January 1, 1995.

27. On September 8, 1994, the Michigan Public Service Commission, in direct response to the enactment of 49 USC § 11501(h) issued an "Order and Notice of Hearing Commencing Contested Case Proceedings for An Order Regarding Federal Preemption of State Motor Carrier Regulation", to examine the effect of 49 USC § 11501(h) on the Michigan Motor Carrier Act and Rules. The proceeding was conducted as a contested case pursuant to the Administrative Procedures Act of 1969 and the Commission's Rules of Practice and Procedure.

28. In its January 11, 1995 Opinion and Order the Commission recognized that only the Legislature had the authority to revise the Michigan Motor Carrier Act:

> . . . This order is therefore intended solely to provide guidance regarding how the Commission expects intrastate motor carrier regulation to operate in Michigan after January 1, 1995. Thus, interested parties retain the right to request a different interpretation from the Commission, the Courts, and the Legislature regarding the effect of Section 601 on the issues addressed below.

29. The Commission found in its January 11, 1995 Opinion and Order that section 601(h) of the FAAA Act, 49 USC § 11501(h) specifically provides for the preemption of state economic regulation of motor carriers engaged in the intrastate transportation of property to the extent such regulation is related to a price, route, or service.

30. The Commission found in its January 11, 1995 Opinion and Order that Congress limited the preemptive reach of Section 601 under the heading "Matters not Covered" found at 49 USC § 11501(h)(2). There Congress specifically stated as follows:

> (1) – (a) Shall not restrict the safety regulatory authority of a state with respect to motor vehicles, the authority of the state to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or the authority of a state to regulate motor carriers with regard to minimal amounts of financial responsibility relating to insurance requirements and self insurance authorization; and (b) does not apply to the transportation of household goods.

31. Pursuant to the Commission's January 11, 1995 Order in MPSC Case T-1273, applications for intrastate authority have been issued for 1995 on a state-wide basis, namely, a motor carrier wishing to perform intrastate service in Michigan makes application for authority for the entire state of Michigan, and pays the requisite application fee. The application then is subject to review for safety, fitness, insurance requirements, and other matters to ensure that the carrier may be authorized to perform services in Michigan. Due to the adoption of Section 601 of the FAAA, effective January 1, 1995, authority is no longer issued relative to any specific rate, route, or service, except for household goods carriers. A copy of the statewide application for intrastate authority is attached as ***Exhibit D***. The safety review consists of an analysis of Part II of the Application, Safety Information, as well as any supplemental data that may be requested; U.S.D.O.T. records

regarding safety ratings; and Michigan State Police files regarding vehicle inspections, violations found and citations issued. From those materials a safety profile is developed in accordance with the Commission's order in Docket T-1281.

32. Congress also placed beyond the preemptive reach of Section 601, in an optional format, the continuation of certain standard state transportation practices with regard to uniform cargo liability rules, uniform bills of lading, uniform cargo credit rules and anti-trust immunity for joint line rates or routes, classifications and mileage guides if compliance with state law was no more burdensome than compliance with federal law covering the same subject and if requested by a carrier.

33. In its January 11, 1995 Opinion and Order, the Commission noted that the most important issue to be decided was whether Section 601 preempts the MMCA and rules, either in their entirety or, with respect to only those regulatory provisions concerning price, route and service, and concluded as follows:

> Despite some parties' assertions to the contrary, the wording of [s]ection 601 stops far short of precluding state regulation of all aspects of motor carriage. For example, its heading reads "Preemption of State Economic Regulation of Motor Carriers." This implies that, of the range of areas presently covered by state regulation, economic regulation (rather than regulation of safety, fitness, insurance, etc.) was singled out by Congress for at least partial preemption. Such an implication is further supported by the "General Rule" set forth in [s]ection 601(h)(1), which states only that states "may not enact or enforce a law, regulation, or other provision . . . *related to a*

price, route, or service" of any for-hire or private motor carrier. (Emphasis added.) Issues involving prices, routes, and services have long been considered by the motor carrier industry to fall within the definition of economic regulation.

Furthermore, [s]ection 601 lists several exceptions to Congress' preemption of economic regulation. Foremost among these is the statement that [s]ection 601:

> "[S]hall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or the authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization." [Section 601(h)(2)(A).]

Next, [s]ection 601 states that its preemptive effect "does not apply to the transportation of household goods." [Section 601(h)(2)(B).] Finally, under the heading "State Standard Transportation Practices," [s]ection 601 indicates that it "shall not affect any authority of a State . . . to enact or enforce" a law, rule, or regulation related to uniform cargo liability rules, uniform bills of lading or receipts for property being transported, uniform cargo credit rules, or antitrust immunity for joint-line rates or routes, classifications, and mileage guides. [Section 601(h)(3)(A).] However, it further provides that continuing regulatory authority over these standard transportation practices (1) will only arise where the law, rule, or regulation "is no more

burdensome" than compliance with federal laws covering the same issue and corresponding regulations issued by either the ICC or the U.S. Secretary of Transportation, and (2) will only apply to a carrier "upon request of such carrier." [Section 601(h)(3)(B).] Therefore, the language of [s]ection 601 reflects that its preemptive effect was not intended to be all-encompassing.

The legislative history of [s]ection 601 supports a similar conclusion. According to the Conference Report, its passage was not designed to preempt all state regulation of motor carriage. Rather, it was intended only to "level the playing field between air carriers on the one hand and motor carriers on the other with respect to *economic* trucking regulation." (Conference Report, p. 82.) [Emphasis added.] Specifically, Congress sought to eliminate the substantial competitive advantage given to air carriers like Federal Express Corporation over traditional motor carriers like UPS as a result of *Federal Express Corp* v *California Public Utilities Comm*, 936 F2d 1075 (CA 9, 1991), cert den ___ US ___ (1992). The drafters' intent to achieve this result while limiting the breadth of [s]ection 601's preemptive effect can be discerned from page 85 of the Conference Report, where it is noted that:

> "New subsection (h)(2) emphasizes that *State authority to regulate safety, financial fitness and insurance*, transportation of household goods, vehicle size and weight and hazardous materials routing of motor carriers is unchanged since State regulation in those areas is not a price, route or service and thus is unaffected." [Emphasis added.]

The Conference Report goes on to disclose that, in return for an agreement by the American Trucking Association (ATA) to withdraw its opposition to the FAA[A] Act, Congress endeavored to structure [s]ection 601 in a way that would "allow regulatory protection to continue for noneconomic factors, such as liability rules, antitrust immunity to publish documents, insurance, safety, leasing and cargo credit rules." (Conference Report, p. 88.)

Based on [s]ection 601's wording and legislative history, the Commission concludes that it preempts only those provisions of the [MMCA] and the Rules relating to price, route, and service. In reaching this conclusion, the Commission specifically rejects [Appellant] Central's argument that, because the primary focus of the [MMCA] has always been on economic regulation, no basis exists for continuing state regulation of motor carriage. The Commission reaches this conclusion for two reasons. First, [s]ection 601 does not require that, to avoid preemption, safety regulation must be the primary focus of any state statute regulating motor carriage. Second, . . . safety concerns occupy at least co-equal status with the economic regulation found in the [MMCA]. For example: (1) the first clause of this title states that it is "[a]n act to promote safety upon and conserve the use public highways of the state;" (2) MCL 475.2 proclaims, in pertinent part, that "[i]t is hereby declared to be the purpose and policy of the legislature in enacting this law to confer upon the [C]ommission the power to . . . protect the safety and welfare of the traveling and shipping public in their use of the highways;" and (3) MCL 476.5 requires that, to receive a certificate of authority, a prospective

motor carrier must show that it is fit – which is defined as being safe, suitable, and financially responsible – and that its vehicles "may be operated safely upon the public highways."

Similarly, the Commission does not find persuasive [Appellant] Central's claim that, by using the phrase "motor vehicles" instead of "motor carriers" in portions of [s]ection 601(h)(2)(A), Congress intended to strip state regulatory commissions of their power to address safety issues and to limit the oversight of these issues to law enforcement agencies. At the federal level, the definition found at 49 USC 10102(13) shows that the phrase "motor carriers" refers only to common and contract motor carriers. In contrast, by reading 49 USC 10102(17) in conjunction with 49 USC 10102(16) and 49 USC 10102(26), it appears that the phrase "motor vehicles" extends to private motor carriers as well. Congress' use of the broader terms thus likely arose from a recognition that several state commissions regulate private carriers, in addition to common and contract carriers, at least with regard to safety. This fact, when coupled with [s]ection 601's legislative history, supports rejection of [Appellant] Central's claim.

For all of these reasons, the Commission finds that [s]ection 601 preempts only those portions of the [MMCA] and the Rules relating to price, route, and service. [Pages 20-24]

34. In its January 11, 1995 Opinion and Order, the Commission found consistent with the Conference Report to Section 601 that the Commission would continue to issue certificates of authority to motor carriers operating in intrastate commerce based upon the carrier's ability to

demonstrate compliance with state law regulating safety, financial fitness and insurance.

35. In its January 11, 1995 Opinion and Order the Commission found that neither the language of Section 601 nor the conference report imply that fees imposed by a state's existing regulatory structure might fall within issues related to price, routes or services, and that continued collection of the fees under MCL 478.2 was not preempted. The Commission attached to its January 11, 1995 Opinion and Order, a copy of the Michigan Motor Carrier Act and Rules showing which sections of the act and rules were preempted by drawing a line through the preempted sections.

EFFECT OF PREEMPTION ON MOTOR CARRIER DIVISION

36. The Motor Carrier Division Staff has used the January 11, 1995 Opinion and Order to guide its activities since January 11, 1995. Even prior to the Commission orders in Case No. T-1273, the Staff had taken steps to implement the federal act. New certificate application forms were developed and placed into use as of 11/15/94 which deleted all consideration of routes and services. All rates and tariffs were determined to be invalid as of 1/1/95 and all rate and tariff filings after that date were returned. Applications for certificates of authority continue to be reviewed to determine if the applicant has a satisfactory safety rating or other evidence that the carrier could or would operate safely. Insurance certification continues to be required and continuous coverage monitored. Household goods carriers continue to be regulated as to authority, rates and consumer protection. The 1995 certificate

and decal renewal process was performed as required by the statute and the Commission orders in Case No. T-1273. Further, the 1995 Single State Registration Renewal process for interstate motor carriers was continued.

37. The Motor Carrier Division works to promote safety upon the highways and to assure motor carrier fitness and compliance with existing state laws, regulations and orders of the Commission. The Safety and Compliance Section of the Motor Carrier Division works with the Motor Carrier Division of the Department of State Police to assure safe operations by motor carriers and ensure compliance with applicable laws. The Safety and Compliance Section is required to conduct review of applications for authority as mandated by the Commission's January 11, 1995 order implementing safety rating system, T-1281, which was issued in response to 1993 legislative amendments to the Motor Carrier Act, 1993 PA 352, MCL 479.41-43; MSA 22.587(1)(-)(3), which required the Commission to develop and implement a motor carrier safety rating system by January 1, 1995. Since passage of the FAAA Act and the resulting elimination of complaints about rates or services (except for household goods carriers) the Motor Carrier Division has focused more of its resources on the safety issues required by 1993 PA 254. In 1994, the MPSC Motor Carrier Division had 21 positions. After passage of the FAAA Act in August, new application forms were developed, new procedures put into effect and participation by Staff in the Commission's preemption proceeding was required. The Staff ceased accepting filings related to "rates, routes or services" on or about November 15, 1994 and began to accept applications for authority renewal based only on safety and fitness for operating year 1995.

38. Following preemption, the volume of applications for an original certificate of authority increased dramatically because of the changed entry requirements. The new safety rating system required by 1993 PA 352 and made effective January 1, 1995 required Staff to conduct a safety review of all of the new applicants as well as assuring proper insurance. It was evident that many of these applicants were unfamiliar with legal safety requirements such as drug testing and annual vehicle inspections, some did not even have a commercial drivers license. Thus, a significant education component was required in 1995 and the MPSC Staff worked with the Michigan Trucking Association to provide educational resources.

39. For the fiscal year ending 9/30/95, the Legislature has appropriated 2,162,200 to the Public Service Commission from motor carrier fees collected pursuant to the Motor Carrier Act. Of that amount, 1,584,800 was for the Motor Carrier Regulation Division and the remaining 577,400 for overhead and support operations of the Commission such as financial and personnel services and hearing officers. An additional 566,300 was appropriated to the Department of Commerce for support services such as office rent and data processing services. This appropriations act was signed in July of 1994 and did not anticipate the passage of the federal preemption act.

40. The fiscal year 1995-96 budget for the MPSC and the Department of Commerce reflects significantly less resources funded by motor carrier fees. In fiscal year 1994-95, the total motor carrier fees apportioned to the Public Service Commission and the Department of Commerce was $2,728,500. For fiscal year 1995-96, the aforementioned appropriated amount has been reduced to $1,936,000, a reduction of $791,500.

41. The unavailability of the motor carrier fees to support these appropriations would result in the elimination of approximately 22 positions supporting current in the continuing motor carrier regulation functions. A description of the specific functions of the MPSC Motor Carrier Regulation Division and how they are changed by the Federal Act are as follows:

a. *Safety and Compliance*: this work unit consists of three staff who perform safety evaluations on applicants for a MPSC certificate. They also handle complaints against motor carriers for safety or insurance problems. Prior to 1/1/95, they also handled complaints related to economic regulation. After the issuance of the Commission order on 1/11/95, T-1281 regarding the motor carrier safety rating system, the complexity of the safety evaluations significantly increased. The size of this unit has not changed as a result of preemption.

b. *Rates and Tariffs*: this work unit currently consists of one staff person who handles economic regulation of the household goods industry and water carriers and the few remaining elements of motor carrier rate regulation as provided by the FAAA Act, 49 USC 11501. Prior to 1/1/95, this unit also included an auditor. This position was eliminated due to preemption.

c. *Authorities*: this work component of the Operations Section consists of three staff persons who process applications for MPSC certificates. This administrative function involves working with applicants on requirements, notices, legal sufficiency of documents

and preparation of orders and certificates. Prior to 1/1/95, this work component had four staff, one staff position has been eliminated due to preemption by the FAAA Act.

d. *Revenue Collection and Issuance of Credentials*: The remaining staff positions of the Operations Section handle the various fee collections, issuance of decals and SSRS receipts and maintain a walk-in over-the-counter service for motor carriers. This function currently utilizes nine staff positions, but prior to preemption utilized 10 staff positions.

e. *Management*: The Motor Carrier Regulation Division also has a director and secretary.

REBUTTAL TO TNT HOLLAND'S AFFIDAVIT

44. Affiant has reviewed the intervenor's motion for summary disposition in this case as well as the affidavit of Mr. James C Crozier of TNT Holland Motor Express, Inc.

45. Affiant has a general knowledge of TNT Holland's operations in the State of Michigan based on several years of regulatory oversight. TNT Holland is a major intrastate motor carrier which generated over $11.8 million in strictly intrastate revenue in 1993. TNT Holland is the 5th largest general commodity motor carrier in terms of intrastate revenue and increased its intrastate revenue 27% in 1993 over 1992. TNT Holland operates a network of 7 terminals in the State of Michigan from which it makes daily pickups and deliveries to hundreds if not thousands of customers. It also has contracts with numerous large shippers which involve significant intrastate business. By its own admission it uses in excess of 1,300 trucks or tractors in intrastate commerce.

46. Mr. Crozier takes the position that TNT Holland's intrastate operations are incidental to its interstate operations and therefore the intrastate vehicle fee imposed by 478.2(1) is a burden on interstate commerce rather than intrastate commerce. The scope of operation described above demonstrates the contrary.

47. TNT Holland is a well managed, efficient and profitable motor carrier. Management decides which vehicles are to be used for intrastate operations based on the judgement that they will generate intrastate revenue. Those vehicles not used in Michigan intrastate commerce are not subject to the $100 vehicle fee.

48. Mr. Crozier states that TNT Holland engages in intrastate commerce in 17 states. Many of those states continue to regulate the intrastate operation of motor carriers and collect a certificate application fee, a renewal fee and an annual vehicle fee just like Michigan does. (See ***Exhibit B***).

49. Throughout the arguments of plaintiffs is the underlying premise that the 478.2(1) fee is an "interstate" fee and therefore a burden on interstate commerce. It is an intrastate fee. Interstate motor carriers pay vehicle specific fees pursuant to MCL 478.2(2) or 478.7 of the Motor Carrier Act. TNT Holland pays the intrastate vehicle fee, 478.2(1) for intrastate operations which generate revenues, and utilize state highways and police protection. If plaintiffs' arguments were accepted, any motor carrier with ICC authority could avoid paying state fees or taxes for intrastate operations. 478.2(1) is fair because all vehicles used in intrastate commerce pay the same fee in exchange for police protection and use of state highways.

50. Intervenors argue that a fee which affects interstate commerce must be apportioned or otherwise factored on a mileage basis or exposure criteria. The argument is fallacious. The Single State Registration Program (federally authorized), is based on a flat fee of $10.00 or less per vehicle. The Michigan vehicle registration fee to obtain license plates is based on vehicle weight. The so-called "flat fees" are administratively simple and efficient. The American Trucking Association for years has fought against distance taxes as being too inefficient and difficult to administer.

51. If every state in the Union adopted MCL 478.2(1) there could be no multiplicity of fees because the fees relate only to Michigan intrastate authority.

Further, affiant sayeth not.

Thomas R. Lonergan

Subscribed and sworn to before me
this **14th** day of **September, 1995.**

Carol Ann Dane, Notary Public
Eaton County, Michigan
My Commission Expires: 05/05/96

STATE OF MICHIGAN
IN THE COURT OF CLAIMS

WESTLAKE TRANSPORTATION, INC., et al,

Plaintiffs,

v

MICHIGAN PUBLIC SERVICE COMMISSION, et al

Defendants. /

File No. 95-15628 CM
Hon. James R. Giddings

TROY CAB, INC., et al,

Plaintiffs,

v

MICHIGAN PUBLIC SERVICE COMMISSION, et al

Defendants. /

File No. 94-15631 CM
Hon. James R. Giddings

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AFFIDAVIT OF TIMOTHY J. YUNGFER

Captain Timothy J. Yungfer, being first duly sworn, deposes and says as follows:

1. Affiant is a Captain, Commanding Officer of the Motor Carrier Division of the Department of State Police, located at 300 N. Clippert, Lansing, Michigan 48913.

2. The Motor Carrier Division, Department of State Police, is responsible for promoting safety upon the highways through enforcement of state and federal laws relating to commercial vehicles and their use of the highways, including the provisions of the Motor Carrier Act

(Act No. 254 of the Public Acts of 1933), the Motor Carrier Safety Act (Act No. 181 of the Public Acts of 1963), the Michigan Vehicle Code (Act No. 300 of the Public Acts of 1949) and the Fire Prevention Act (Act No. 207 of the Public Acts of 1941).

3. The Motor Carrier Division of the Department of State Police employs approximately 165 inspection and enforcement officers and 13 clerical personnel to carry out the various functions and duties of the Motor Carrier Division throughout the State of Michigan.

4. Approximately 40 of the uniformed enforcement officers are assigned to road patrol duties at state police posts throughout the state, and 68 uniformed officers are assigned to individual scale sites.

5. The uniformed officers have full enforcement authority to enforce all of the general laws of the state as they pertain to commercial vehicles.

6. There exists in the Motor Carrier Division four specialized groups which carry out specific functions promoting safety upon the highways through enforcement of laws relating to commercial vehicles and their operations.

7. The first specialized group is the Investigative Section made up of three uniform officers and a supervisory sergeant. The investigative section is responsible for reviewing complaints processed through the Michigan Public Service Commission. The primary focus of the Investigative Section as of May 1995 has been to conduct safety compliance review of motor carriers at their terminals or corporate offices within the state. A safety compliance review may include an on-site inspection of the motor

carrier's log books and files to determine if applicable motor carrier safety regulations are being followed. The investigative section is also responsible for on-site safety inspections of the motor carrier's vehicles at the terminal.

8. The second specialized group is the Hazardous Materials Section comprised of 11 uniformed enforcement officers and a sergeant supervisor. This section is responsible the enforcement of safety regulations related to the transportation of hazardous materials.

9. The third specialized group is the Management Audit Section. This section is comprised of three uniformed officers and a supervisory sergeant. The Management Audit Section is primarily responsible for conducting safety audits known as compliance reviews on interstate and intrastate motor carriers utilizing the United States Department of Transportation safety rating system.

10. The fourth specialized section is the Bus Inspection Section, comprised of twelve inspectors and uniformed enforcement officers supervised by a sergeant. This section is responsible for ensuring that all school buses meet safety and equipment standards required by state law.

11. In addition to the four specialized groups, the enforcement officers assigned to road patrol throughout the state conduct safety inspections of commercial vehicles stopped on the highways. Road patrol officers are also responsible for the enforcement of the criminal laws and general regulations pertaining to the operation of commercial vehicles on the highway, including the enforcement of moving violations and size and weight laws.

12. Enforcement officers assigned to scale facilities throughout the state to promote safety upon the highways

and protect highway infrastructure by enforcing size and weight laws, conducting driver and vehicle safety inspections of commercial vehicles, and inspecting for proof of registration, operating authority, proof of insurance, and documentation that taxes and fees have been paid.

13. During the 1993/1994 fiscal year, the Motor Carrier Division received and appropriation of approximately $14 million, allocated in the following manner.

a. $2,553,700 from Motor Carrier Fees collected under the provision of the Motor Carrier Act.

b. $944,100 from the Michigan Truck Safety Commission.

c. $5,944,000 from the State Trunkline Fund.

d. $2,553,700 from the federal Motor Carrier Safety Assistance Program. States receiving funds under this program are required to contribute 20% of the funds received for the grant. Motor Carrier Fees are used, in part, as the state match.

e. $749,100 from the state general fund for school bus inspections.

f. $368,900 from hazardous materials inspection fees.

14. The Department of State Police has received funding from the assessment of fees collected under the provision of The Motor Carrier Act (Act No. 254 of the Public Acts of 1933), for the enforcement of the provisions of The Motor Carrier Act and the enforcement of other safety laws and regulations pertaining to the operation of commercial vehicles, since the transfer of the motor carrier enforcement function to the Department of State Police from the Michigan Public Service Commission by Executive Order in 1982.

15. Since the 1991/92 fiscal year, the Motor Carrier Division of the Department of State Police has received and expended Motor Carrier Fees in accordance with the chart identified as attachment "B".

16. The unavailability of the approximate $2.6 million from motor carrier fees and the subsequent reduction in state matching funds for the motor carrier safety assistance program would result in the elimination of 45 uniform enforcement officer positions (not including the reduction in officers to pay for unemployment benefits) assigned to road patrol and weigh station operations. This represents an approximate one-third reduction in resources utilized to promote safety upon and conserve the use of state highways.

17. Since January 1, 1995, the Motor Carrier Division of the Department of State Police has been in compliance with the Federal Aviation Administration Authorization Act which prohibits states from enforcing any laws or regulations related to the price, route or services of a motor carrier.

Further affiant sayeth not.

/s/ Timothy J. Yungfer
Captain Timothy J. Yungfer

Subscribed and sworn to before me
this 14th day of September, 1995.

/s/ Carol Ann Dane
Carol Ann Dane, Notary Public
Eaton County, Michigan
My Commission Expires: 05/05/96

STATE OF MICHIGAN
IN THE COURT OF CLAIMS

WESTLAKE TRANSPORTATION, INC., et al,

Plaintiffs,

v

MICHIGAN PUBLIC SERVICE COMMISSION, et al

Defendants. /

File No. 95-15628 CM
Hon. James R. Giddings

TROY CAB, INC., et al,

Plaintiffs,

v

MICHIGAN PUBLIC SERVICE COMMISSION, et al

Defendants. /

File No. 94-15631 CM
Hon. James R. Giddings

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SUPPLEMENTAL AFFIDAVIT OF TIMOTHY J. YUNGFER

Timothy J. Yungfer, being first duly sworn, deposes and says as follows:

1. Affiant filed a previous Affidavit signed September 14, 1995, in the above captioned matter which inadvertently omitted that the statements were made on personal knowledge, and that if sworn as a witness, Affiant can testify competently to the facts stated in the Affidavit.

2. Also omitted from my original Affidavit signed September 14, 1995 was Attachment "B" referenced in paragraph 15 which shows appropriations received and expended by the Motor Carrier Division of the Department of State Police since 1991-1992 fiscal year. Attachment "B" is included with this Supplemental Affidavit.

3. Affiant has reviewed the contents of the Affidavit signed on September 14, 1995, and states affirmatively that the contents of the Affidavit are made on Affiant's personal knowledge, and that if sworn as a witness, Affiant can testify competently to the facts stated in the Affidavit.

Further, Affiant sayeth not.

/s/ Timothy J. Yungfer
Timothy J. Yungfer

Subscribed and sworn to before me
this 20th day of September, 1995.

/s/ Carol Ann Dane
Carol Ann Dane, Notary Public
Eaton County, Michigan
My Commission Expires: 05/05/96

Prepared by Paul Walters 9/19/95

		Prorated Expenses*		
Fiscal Year	Appropriated Motor Carrier Fees	General Enforcement	Safety Inspections	Unexpended Motor Carrier Fees
1991/92	2,484,100	2,252.641	149,840	81,619
1992/93	2,484,100	2,323.966	143,234	16,900
1993/94	2,553,700	2,158,607	146,535	250,553
1994/95	2,571,400	2,332,703	144,864	93,833
1995/96	2,664,100			

* Fiscal Year 1994/95 are projected through year end. Expenses are prorated to percentage of funding from Motor Carrier Fees attributable to the General Enforcement and Safety Inspection Programs

STATE OF MICHIGAN

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SUPPLEMENTAL AFFIDAVIT OF THOMAS R. LONERGAN

Thomas R. Lonergan, being first duly sworn, deposes and says as follows:

1. Affiant has reviewed the Affidavit signed September 14, 1995 and notes that the last sentence of Paragraph 50 should be changed to read as follows:

> The American Trucking Association for years has fought against weight-distance taxes as being too inefficient and difficult to administer.

2. Affiant's September 14, 1995 Affidavit also inadvertently omitted that the statements were made on personal knowledge, and that if sworn as a witness, Affiant could testify competently to the facts stated in the Affidavit.

3. Affiant has reviewed the contents of the Affidavit signed on September 14, 1995, and states affirmatively that the contents of the Affidavit are made on Affiant's personal knowledge, and that if sworn as a witness, Affiant can testify competently to the facts stated in the Affidavit.

4. Affiant submits that Plaintiffs mistakenly compare the federal limitations under the *Single State Registration System* (SSRS) on the state requirement that interstate carriers register their ICC authority with Michigan with Michigan's requirements [MCL 478.2(2)] that interstate carriers, licensed in this state, shall pay $100 for each vehicle "registered in this state and operating entirely in interstate commerce." Michigan's requirement that interstate carriers register their ICC authority is covered by MCL 478.7(4). Under the SSRS "registration" refers to registering ICC authority with the states. Under 478.2(2), a vehicle is "registered" in this state if it is commercially plated and registered in Michigan under the Vehicle Code or International Registration Plan (IRP).

5. The Single State Registration System (SSRS) allows states to charge interstate motor carriers $0-$10 per vehicle to register their ICC authority with a state. (MCL 478.2)2) charges interstate carriers for safety regulation or as stated in MCL 478.2 "for the administration of this act," $100 per vehicle but only on vehicles which display Michigan license plates. As the Director of

the Motor Carrier Division of the Michigan Public Service Commission which is responsible for the administration of the Motor Carrier Act, affiant assures the Michigan Public Service Commission that the MMCA is in compliance with federal law. To affiant's knowledge, Congress has never stated that the SSRS would prohibit or limit states power to tax motor carriers. See my original affidavit, Appendix 4, paragraph 9 and Exhibit A for explanation of our dual system of federal and state regulation, coupled with a copy of the general jurisdiction statute of the ICC, 49 USC section 10521 wherein it states:

> "This subtitle *does not*"
>
> . . .
>
> (1) except as provided in sections 10922(c), 10935, 10936, 11501(e), and *11501(h)* of this title, *affect the power of a state to regulate intrastate transportation provided by a motor carrier*;
>
> . . .
>
> (4) except as provided in sections 11503(a) and section 11504(b) of this title, *affect the taxation power of a state over a motor carrier.* (emphasis added).

6. The SSRS is found in section 11506 of the Interstate Commerce Act and is not mentioned as an exception and therefore is not a limitation on the states taxation power in section 10521(4), but the FAAA Act, 11501(h) is an expressed exception and therefore a limitation on the power of states to regulate intrastate transportation by motor carriers as contained in section 10521(1). If Congress intended to limit the taxation power of the states through the SSRS, section 11506, they would have included it as an exception to 49 USC 10521(4). Congress

certainly included the 1994 FAAA Act section 11501(h) as a limitation on states power to regulate intrastate transportation by including it in 49 USC 10521(1).

7. The SSRS fee of $0-$10 is levied by each state in which an interstate vehicle travels. The more states the vehicle travels through, the more the gross amount of the fee, which is then allocated among the states. However, Michigan does not collect the $10 fee for Michigan travel of an interstate vehicle if the vehicle has paid a $100 fee under either 478.2(1) (vehicles using intrastate authority) or 478.2(2) (vehicles licensed and registered in Michigan). Historically, the Michigan Public Service Commission has interpreted MCL 478.2(2)'s applicability requirement of "vehicles registered in Michigan" to mean vehicles which have Michigan license plates obtained through the Michigan Secretary of State.

8. Affiant submits that motor carriers such as TNT Holland are often referred to as "less-than-truckload" carriers. This refers to the method of operation that involves three phases. Phase one is the pickup phase in which trucks based at a terminal makes numerous small shipment pickups in an adjacent geographical area and returns these shipments to the terminal where they are unloaded. Phase two involves the "line-haul" in which shipments destined for another terminal location are consolidated and loaded on a truck for delivery to the remote terminal where the truck is once again unloaded. The third phase would be the delivery phase in which trucks based at the terminal deliver the various shipments in the adjacent geographical area. These shipments could consist of either interstate or intrastate shipments or both. However, in the case of TNT Holland with its network of seven Michigan terminals, substantial quantities of freight

would be strictly intrastate. It is also a common industry practice to dedicate a truck and driver to the same pickup, linehaul or delivery route. For example, the daily line-haul between Detroit and Grand Rapids would normally involve the same driver and probably the same truck each day.

9. The affidavit submitted by Mr. Crozier suggests a method of operation which differs from the typical less-than-truckload motor carrier and does not comport with MPSC staff's understanding of TNT Holland's method of operation.

10. The situation described by Mr. Crozier whereby vehicles operate in both interstate and intrastate commerce, and with intrastate shipments merely "topping off" trailer loads is not common and not applicable to an evaluation of 478.2(1) because:

(a) a majority of carriers or vehicles subject to the $100 fee in 478.2(1) are strictly intrastate only;

(b) those engaging in both intrastate and interstate commerce can pay $100 per vehicle pursuant to MCL 478.2(1) for intrastate vehicles and $10 or less for interstate vehicles pursuant to MCL 478.7(4) which is consistent with the federal SSRS.

(c) a carrier selects how to apportion vehicles as to interstate and intrastate business based on his own business judgement and circumstances;

(d) many, if not most routes, drivers, and trucks are fixed and routine, thereby allowing an informed business judgement as to appropriate regulation and fees;

(e) a driver and truck operating on a linehaul interstate route would normally not concern itself with pickup or delivery of a shipment in an intervening state, even for purposes of "topping off" a load as this would disrupt schedules and normal shipment patterns.

11. This Supplemental Affidavit is made on affiant's personal knowledge, and if sworn as a witness, affiant can testify competently to the facts stated in this Supplemental Affidavit.

Further, Affiant sayeth not.

/s/ Thomas R. Lonergan
Thomas R. Lonergan

Subscribed and sworn to before me
this 21st day of September, 1995.

/s/ Carol Ann Dane
Carol Ann Dane, Notary Public
Eaton County, Michigan
My Commission Expires: 05/05/96

STATE OF MICHIGAN

IN THE COURT OF CLAIMS

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Plaintiffs,

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SECOND SUPPLEMENTAL AFFIDAVIT OF THOMAS R. LONERGAN

Thomas R. Lonergan, being first duly sworn, deposes and says as follows:

1. That in response to the Supplemental Affidavit of James C. Crozier, section 478.2(3) of the Motor Carrier Act allows for issuance of 72 hour (3 day) permits for a cost of $10.00. Therefore, a motor carrier that is only involved in occasional or incidental intrastate commerce would not have to pay $100 per vehicle pursuant to MCL 478.2(1). When an intrastate business opportunity arises, a motor carrier can obtain a $10.00 temporary permit. A motor

carrier could operate for up to 30 days using the 10 cards before reaching the equivalent of the $100 decal fee.

2. Plaintiffs suggest that the $100 per vehicle fee [478.2(1)] must be apportioned in some manner, such as mileage, but there is no data accumulation system available which could be used to separate miles traveled intrastate versus interstate. MCL 478.2(1) is based on transportation of intrastate shipments, and although the IRP requires motor carriers to declare in advance the number of miles traveled by each vehicle in each state, there is no declaration of intrastate miles charged. Therefore, the IRP system could not be used for mileage data of intrastate operations.

To devise a system based upon mileage would require accumulated data as to the number of intrastate shipments, the weight of such shipments, etc. to reach a reasonable apportionment of interstate versus intrastate revenue. This would make telephone service separations look simple. Both the motor carriers and the State of Michigan would need to devise complex systems for determining fee liability, billing, auditing and so forth. This approach appears to be administratively inefficient for the amount of fee revenue collected per year, approximately $3.5 million involving 3,000 motor carriers.

Further, affiant sayeth not.

/s/ Thomas R. Lonergan
Thomas R. Lonergan

Subscribed and sworn to before
me this 28th day of September, 1995.

/s/ Carol Ann Dane
Carol Ann Dane, Notary Public
Eaton County, Michigan
My Commission Expires: 05/05/96

1995 FORM MCS-1

UNIFORM APPLICATION FOR SINGLE STATE REGISTRATION FOR MOTOR CARRIERS OPERATING UNDER AUTHORITY ISSUED BY THE INTERSTATE COMMERCE COMMISSION

Motor Carrier Identification Numbers — Application for Property Carriers Only

ICC MC Number(s):	US DOT Number:	FEIN Number:

Applicant (identical to name on ICC order)

Name:	Doing Business As (D/B/A):
Telephone Number:	Fax Number:

Address of Principal Place of Business: (A principal place of business is a single location that serves as a motor carrier's headquarters and where it maintains or can make available its operational records.)

Number and Street:	City:	State:	ZIP Code:

Mailing Address if Different from Business Address Above:

Number and Street:	City:	State:	ZIP Code:

Type of Registration: Passenger Carriers cannot register under Single State Registration in Michigan. Call 517/335-2475.

- ☐ **New Carrier Registration** – The motor carrier has not previously registered.
- ☐ **Annual Registration** – The motor carrier is renewing its annual registration.
- ☐ **New Registration State Selection** – The motor carrier has changed its principal place of business or its prior registration State has left the registration program. The prior registration state was _____

Type of Motor Carrier (check one):

☐ Individual ☐ Partnership ☐ Corporation – Enter state in which incorporated _____

List name and title of partners or officers:

_____ Name _____ Title

_____ Name _____ Title

_____ Name _____ Title

Type of ICC Registered Authority:

☐ Permanent Certificate or Permit ☐ Temporary Authority (TA) ☐ Emergency Temporary Authority (ETA)

Expiration Date: _____

STATE OF MICHIGAN IN THE COURT OF CLAIMS
[Caption Omitted In Printing]

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BEST AVAILABLE COPY

Type of Motor Carrier Operation: (check one only)

- ☐ **Transporter of Property** – Using freight vehicles with a gross vehicle weight rating of 10,000 pounds or more.
- ☐ **Transporter of Property** – Using only freight vehicles with a gross vehicle weight rating of less than 10,000 pounds.
- ☐ **Transporter of Passengers** – Using vehicles with a seating capacity of 16 passengers of more.
- ☐ **Transporter of Passengers** – Using only vehicles with a seating capacity of 15 passengers or less.

ICC Certificate(s) or Permit(s):

- ☐ ICC Authority Order(s) attached for first year registration.
- ☐ ICC Authority Order(s) attached for additional authority received.
- ☐ No change from prior year registration.

Proof of Public Liability Security:

- ☐ The applicant or its insurance company will file a copy of its proof of public liability security to the registration state.
- ☐ The applicant or its insurance company has filed a copy of its proof of public liability security with the registration state and the insurance coverage as stated on that form remains in effect.
- ☐ The applicant has an approved self-insurance plan or other security in full force and effect and the carrier is in full compliance with the conditions imposed by the ICC order. A copy of the ICC insurance order is attached or has previously been filed with the registered state.

Hazardous Materials: (check one)

- ☐ The applicant *will not haul* hazardous materials in any quantity.
- ☐ The applicant *will haul* hazardous materials requiring *$1 million* of Public Liability and Property Damage Insurance in accordance with Title 49 CFR 1043.2.
- ☐ The applicant *will haul* hazardous materials requiring *$5 million* of Public Liability and Property Damage Insurance in accordance with Title 49 CFR 1043.2.

Process Agent:

- ☐ ICC form Number BOC–3 or blanket designation attached for new registration.
- ☐ ICC form Number BOC–3 or blanket designation attached reflecting changes of designation of process agent.
- ☐ No change from prior year registration.

Certification:

I, the undersigned, under penalty for false statement, certify that the above information is true and correct and that I am authorized to execute and file this document on behalf of the applicant. (Penalty provisions subject to the laws of the registration state.)

Name (Printed) _____ Date _____

Signature _____ Title _____

CALCULATION OF FEE AMOUNTS DUE EACH STATE

Transporting: ☐ Property ☐ Passenger – Charter ☐ Passenger – Regular Route

For property transporting only. Passenger carriers contact the Michigan Department of Transportation at 517/335-2475.

Designated base state: ***MICHIGAN***

Name:	FAX Number:	ICC Number:

(A) Participating States	(B) Total Number of Vehicles	(C) Per Vehicle Fee		(D) Fee Times Number of Vehicles (Column B x C)
		Michigan Based	Quebec/Ontario Based	
Alabama		$ 6.00	$ 6.00	$
Arkansas		5.00	5.00	
California		0.00	5.00	
Colorado		5.00	5.00	
Connecticut		10.00	10.00	
Georgia		5.00	5.00	
Idaho		2.00	2.00	
Illinois		0.00	7.00	
Indiana		0.00	10.00	
Iowa		1.00	1.00	
Kansas		10.00	10.00	
Kentucky		10.00	10.00	
Louisiana		10.00	10.00	
Maine		8.00	8.00	
Massachusetts		10.00	10.00	
Michigan *		10.00	0.00	
Minnesota		.45	5.45	
Mississippi		10.00	10.00	
Missouri		0.00	10.00	
Montana		5.00	5.00	
Nebraska		0.50	3.50	
New Hampshire		10.00	10.00	
New Mexico		10.00	10.00	
New York		10.00	10.00	
North Carolina		0.00	1.00	
North Dakota		10.00	10.00	
Ohio		5.00	5.00	
Oklahoma		7.00	7.00	
Rhode Island		8.00	8.00	
South Carolina		5.00	5.00	
South Dakota		5.00	5.00	
Tennessee		8.00	8.00	
Texas		0.00	10.00	
Utah		6.00	6.00	
Virginia		10.00	10.00	
Washington		10.00	10.00	
West Virginia		3.00	3.00	
Wisconsin		5.00	5.00	

TOTAL OF ALL STATE FEES..... $

Note: Fees must be paid for each vehicle for each state of travel. Make check or money order (in U.S. funds) payable to the State of Michigan and mail to: Michigan Department of Commerce, Public Service Commission, 6545 Mercantile Way, P.O. Box 30221, Lansing, MI 48909-7721. If you have any questions about completing this form, please contact the Motor Carrier Unit at 517/334-7180 or 517/334-7154.

- Vehicles base-plated in Michigan need not be listed on the "Michigan" line above. Michigan based ICC carriers with vehicles based outside of Michigan must register those vehicles on this form at a fee of $10.00 per vehicle. Vehicles based in Michigan are required to have a $100.00 MPSC decal (Household Goods carriers $50.00). Use Equipment List (form P-344-T) to order MPSC decals.

STATE OF MICHIGAN

COURT OF APPEALS

WESTLAKE TRANSPORTATION, INC., VANDERKOOI CARRIERS, INC., EL TORO MOTOR FREIGHT, INC., MYRIAH, INC., PRISM, INC., GERRIGS TRUCKING & LEASING, INC., and BEST WAY EXPRESS, INC.,

Plaintiffs-Appellants,

and

AMERICAN TRUCKING ASSOCIATION, INC. and TNT HOLLAND MOTOR EXPRESS, INC.,

Intervening Plaintiffs-Appellants,

v

MICHIGAN PUBLIC SERVICE COMMISSION, DEPARTMENT OF TREASURY, and the STATE OF MICHIGAN,

Defendants-Appellees.

FOR PUBLICATION
March 11, 2003
9:00 a.m.

No. 226052; 226122
Court of Claims
LC No. 95-015628-CM

TROY CAB, INC., DEECO SERVICES, INC., d/b/a DEECO TRANSPORTATION, TIBERIO FRANK, d/b/a FAIRFIELD TOWING, ELEX, INC., d/b/a LAFOND EXPRESS, DALE CONSTINE & SONS, INC., CALCUT SALES & SERVICES, INC., d/b/a CALCUT TRUCKING COMPANY,

AMBASSADOR TRANSPORTATION, INC., HAWKINS STEEL CARTAGE, INC., MIDCON FREIGHT SYSTEMS, INC., JLH TRANSFER, INC., H & H ENTERPRISES, INC., d/b/a S & M CARTAGE, INC., CENTRAL TRANSPORT, INC., BANCROFT TRUCKING COMPANY, US TRUCK COMPANY, INC., WEST END CARTAGE, INC., CENTRAL CARTAGE COMPANY, CTX, INC., MOHAWK MOTOR MICHIGAN, INC., ECONOMY TRANSPORT, INC., MCKINLAY TRANSPORT LIMITED, MASON & DIXON LINES, INC., UNIVERSAL AMCAN LIMITED, ROMEO EXPEDITERS, INC., TOM THUMB SERVICES, INC., d/b/a REI, OJ TRANSPORT COMPANY, JLAW ENTERPRISES INC., and OJ TRANSPORT, INC.,

Plaintiffs-Appellants,

and

AMERICAN TRUCKING ASSOCIATION, INC., and TNT HOLLAND MOTOR EXPRESS, INC.,

Intervening Plaintiffs-Appellants,

v

MICHIGAN PUBLIC SERVICE COMMISSION, DEPARTMENT OF TREASURY, DEPARTMENT OF COMMERCE, and the STATE OF MICHIGAN,

Defendants-Appellees.

No. 226053; 226137
Court of Claims
LC No. 95-015631-CM

Updated Copy
May 9, 2003

Before: Markey, P.J., and Saad and Smolenski, JJ.

SMOLENSKI, J.

In these consolidated class actions, plaintiffs, individual class-representative trucking companies, and intervening plaintiffs, two trucking companies, appeal by right from a December 30, 1998, judgment of the Court of Claims that granted summary disposition in favor of defendants. The appeals were consolidated. We affirm.

I

This case involves the effect of several federal laws, specifically 49 USC 11501, 49 USC 11506, and subsection 601(h) of the Federal Aviation Administration Authorization Act of 1994 (FAAAA), PL 103-105, subsection 601(h), on various provisions of Michigan's Motor Carrier Act (MCA), MCL 475.1 *et seq.* This litigation began on January 3, 1995, when plaintiffs Westlake Transportation, Inc., et al., filed their complaint, alleging that the state's $100 annual fees for interstate and intrastate motor carriers were unconstitutional because federal laws, 49 USC 11506 and 49 USC 11501, respectively, preempted the state laws. On January 9, 1995, Troy Cab, Inc., et al., filed their complaint, and made similar allegations.

In Michigan, since 1933, motor-carrier regulation has been pursuant to the Michigan MCA. The act authorizes the Michigan Public Service Commission (PSC) to enforce the act. MCL 475.1(c); MCL 475.2. Under the MCA, motor carriers must pay a fee of $100 for each application filed with the commission for a certificate of authority or for a permit to operate intrastate. MCL 478.1. Also, motor carriers are required to pay an annual fee of $100 a vehicle

for the administration of the act. MCL 478.2(1) and (2). Subsection 1 applies to motor-carrier vehicles that operate intrastate pursuant to a certificate of authority, while subsection 2 applies to motor-carrier vehicles licensed in Michigan that engage entirely in interstate commerce.[1] The act also provides that motor carriers that are registered outside Michigan are required to pay a registration fee of $10 a vehicle. MCL 478.7.

In February 1995, intervening plaintiffs filed their complaint, alleging that the intrastate-decal fee violated the Commerce Clause, US Const, art I, § 8, cl 3, and were subsequently granted the right to intervene. Plaintiffs Westlake Transportation, Inc., et al., and intervening plaintiffs both amended their complaints, adopting the other's substantive claims. The plaintiffs' cases were consolidated in April 1995 and the classes were certified in June 1995.

On June 22, 1995, plaintiffs filed two separate motions for partial summary disposition pursuant to MCR 2.116(C)(10): one regarding their intrastate-preemption claim and the other regarding their interstate-preemption claim. On June 30, 1995, intervening plaintiffs filed their motion for partial summary disposition pursuant to MCR 2.116(C)(10), regarding their claim alleging violation of the Commerce Clause. On October 27, 1995, defendants renewed their own motion for summary disposition. The Court of Claims issued its opinion on October 13, 1998,

[1] The fees in MCL 478.1 and 478.2(1) will be referred to as the "intrastate fees," and the fee in MCL 478.2(2) will be referred to as the "interstate fee."

concluding that plaintiffs' and intervening plaintiffs' claims were meritless, and denied their motions for partial summary disposition in an order entered on November 12, 1998. Subsequently, the court granted defendants' motion for summary disposition "for the reasons defendants stated in their November 10, 1998 supplemental brief," which relied on the court's October 13, 1998, opinion.

The court concluded that § 601 of the FAAAA did not preempt MCL 478.2(1) because the federal law did not preempt safety-related regulatory fees. The court also found that MCL 478.2(2) was not preempted because the federal law imposed the $10 maximum only on "participating states," not "registration states." The court further determined that MCL 478.2(1) did not implicate the Commerce Clause because it did not burden foreign motor carriers more heavily as compared to Michigan motor carriers engaged in interstate commerce, since the state statute only affects Michigan motor carriers who engage solely in intrastate commerce. Plaintiffs filed a motion for reconsideration, which was denied. Plaintiffs and intervening plaintiffs now appeal by right.

II

Summary disposition of all or part of a claim or defense may be granted when

> [e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law. [MCR 2.116(C)(10).]

A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim, and is reviewed de novo on appeal. *Spiek v Dep't of*

Transportation, 456 Mich 331, 337; 572 NW2d 201 (1998). When deciding a motion for summary disposition, a court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in the light most favorable to the nonmoving party. *Ritchie-Gamester v Berkley,* 461 Mich 73, 76; 597 NW2d 517 (1999). A motion for summary disposition based on the lack of a material factual dispute must be supported by documentary evidence. MCR 2.116(G)(3)(b), *Meyer v Center Line,* 242 Mich App 560, 574; 619 NW2d 182 (2000). All reasonable inferences are to be drawn in favor of the nonmovant. *Bertrand v Alan Ford, Inc,* 449 Mich 606, 618; 537 NW2d 185 (1995).

III

Plaintiffs argue that MCL 478.2(2) is preempted by federal law, specifically 49 USC 11506.[2] Determining whether federal law preempts a state law presents an issue of statutory construction and is a question of law. *Konynenbelt v Flagstar Bank, FSB,* 242 Mich App 21, 27; 617 NW2d 706 (2000). Congressional intent is the cornerstone of preemption analysis. *Fort Halifax Packing Co, Inc v Coyne,* 482 US 1, 8; 107 S Ct 2211; 96 L Ed 2d 1 (1987).

The Supremacy Clause of the United States Constitution provides Congress with the power to preempt state law. US Const, art VI, cl 2. A general presumption exists in the law against federal preemption. *Duprey v Huron & E R Co, Inc,* 237 Mich App 662, 665; 604 NW2d 702 (1999).

[2] This statute is currently codified as 49 USC 14504; however, we will refer to the law as § 11506.

Federal preemption occurs only under certain conditions, such as when (1) Congress enacts a federal statute that expresses a clear intent to preempt state law, (2) an outright or actual conflict exists between federal and state law, (3) compliance with both federal and state law is effectively impossible, (4) an implicit barrier to state regulation exists in federal law, (5) Congress has legislated comprehensively, thereby occupying an entire field and leaving no room for supplemental state law, or (6) the state law stands as an obstacle to the accomplishment and execution of the full objectives of Congress. *Id.*

49 USC 11506 provided, in part:

> (b) General rule. – The requirement of a State that a motor carrier, providing transportation subject to jurisdiction under subchapter I of chapter 135 and providing transportation in that State, must register with the State is not an unreasonable burden on transportation referred to in section 13501 when the State registration is completed under standards of the Secretary under subsection (c). When a State registration requirement imposes obligations in excess of the standards of the Secretary, the part in excess is an unreasonable burden.
>
> (c) Single State registration system. –
>
> (1) In general. – The Secretary shall maintain standards for implementing a system under which –
>
> (A) a motor carrier is required to register annually with only one State by providing evidence of its Federal registration under chapter 139;

(B) the State of registration shall fully comply with standards prescribed under this section; and

(C) such single State registration shall be deemed to satisfy the registration requirements of all other States.

(2) Specific requirements. –

(A) Evidence of Federal registration; proof of insurance; payment of fees. – Under the standards of the Secretary implementing the single State registration system described in paragraph (1) of this subsection, only a State acting in its capacity as registration State under such single State system may require a motor carrier registered by the Secretary under this part –

(i) to file and maintain evidence of such Federal registration;

(ii) to file satisfactory proof of required insurance or qualification as a self-insurer;

(iii) to pay directly to such State fee amounts in accordance with the fee system established under subparagraph (B)(iv) of this paragraph, subject to allocation of fee revenues among all States in which the carrier operates and which participate in the single State registration system; and

(iv) to file the name of a local agent for service of process.

(B) Receipts; fee system. – The standards of the Secretary –

(i) shall require that the registration State issue a receipt, in a form prescribed under the

standards, reflecting that the carrier has filed proof of insurance as provided under subparagraph (A)(ii) of this paragraph and has paid fee amounts in accordance with the fee system established under clause (iv) of this subparagraph;

(ii) shall require that copies of the receipt issued under clause (i) of this subparagraph be kept in each of the carrier's commercial motor vehicles;

(iii) shall not require decals, stamps, cab cards, or any other means of registering or identifying specific vehicles operated by the carrier;

(iv) shall establish a fee system for the filing of proof of insurance as provided under subparagraph (A)(ii) of this paragraph that –

(I) is based on the number of commercial motor vehicles the carrier operates in a State and on the number of States in which the carrier operates;

(II) minimizes the costs of complying with the registration system; and

(III) results in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991; and

(v) shall not authorize the charging or collection of any fee for filing and maintaining evidence of Federal registration under subparagraph (A)(i) of this paragraph.

(C) Prohibited fees. – The charging or collection of any fee under this section that is not in accordance with the fee system established under

> subparagraph (B)(iv) of this paragraph shall be deemed to be a burden on interstate commerce.

The MCA applies to entities engaged in interstate commerce only to the extent it is consistent with federal law. MCL 476.12. MCL 478.2(2) provides, in pertinent part, "A motor carrier licensed in this state shall pay an annual fee of $100.00 for each vehicle operated by the motor carrier which is registered in this state and operating entirely in interstate commerce."[3]

Plaintiffs contend that the interstate fee was preempted both before and after the implementation of the Single State Registration System (SSRS) on January 1, 1994. With the implementation of the SSRS, § 11506 was amended and significant language changes were made. We will first address plaintiffs' preemption argument regarding § 11506 after January 1, 1994. However, before we do so, an understanding of the evolution of this federal law is helpful. The United States Supreme Court has summarized this evolution in *Yellow Transportation, Inc v Michigan*, 537 US ___, ___; 123 S Ct 371, 374-375; 154 L Ed 2d 377, 383-384 (2002):

> Beginning in 1965, Congress authorized States to require interstate motor carriers operating within their borders to register with the State proof of their Interstate Commerce Commission (ICC) interstate operating permits. Pub L 89-170, 79 Stat 648, 49 USC § 302(b)(2) (1970 ed). Congress provided that state registration requirements

[3] The subsection also provides that the fee is only $50 if the motor carrier begins operations after June 30th of the year. The other provisions in the subsection are not at issue in this appeal.

> would not constitute an undue burden on interstate commerce so long as they were consistent with regulations promulgated by the ICC. *Ibid.*

Prior to 1994, the ICC allowed States to charge interstate motor carriers annual registration fees of up to $10 per vehicle. See 49 CFR § 1023.33 (1992). As proof of registration, participating States would issue a stamp for each of the carrier's vehicles. § 1023.32. The stamp was affixed on a "uniform identification cab car[d]" carried in each vehicle, within the square bearing the name of the issuing State. § 1023.32(d)-(e). This system came to be known as the "bingo card" system. *Single-State Insurance Registration*, 9 ICC2d 610, 610 (1993).

The "bingo card" regime proved unsatisfactory to many who felt that the administrative burdens it placed on carriers and participating States outweighed the benefits to those States and to the public. HR Rep No 102-171, pt I, p 49 (1991), HR Conf Rep No 102-404, pp 437-438 (1991), US Code Cong & Admin News 1991, pp 1526, 1679. In the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Congress therefore directed the ICC to implement a new system to replace the "bingo card" regime.* See Pub L 102-240, § 4005, 105 Stat 1914, 49 USC § 11506(c) (1994 ed). Under the new system, called the Single State Registration System, "a motor carrier [would be] required to register annually with only one State," and "such single State registration [would] be deemed to satisfy the registration requirements of all other States." §§ 11506(c)(1)(A) and (C). Thus, one State would – on behalf of all other participating States – register a carrier's vehicles, file and maintain paperwork, and collect and distribute

registration fees. § 11506(c)(2)(A). Participation in the Single State Registration System was limited to those States that had elected to participate in the "bingo card" system. § 11506(c)(2)(D).

ISTEA also capped the per-vehicle registration fee that participating States could charge interstate motor carriers. Congress directed the ICC to "establish a fee system . . . that (I) will be based on the number of commercial motor vehicles the carrier operates in a State and on the number of States in which the carrier operates, (II) will minimize the costs of complying with the registration system, and (III) will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." § 11506(c)(2)(B)(iv). Congress provided that the charging or collection of any fee not in accordance with the ICC's fee system would "be deemed to be a burden on interstate commerce." § 11506(c)(2)(C).

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*Congress abolished the ICC in 1995 and assigned responsibility for administering the new Single State Registration System to the Secretary of Transportation. See ICC Termination Act of 1995, Pub L 104-88, § 101, 109 Stat 803. The provisions of ISTEA governing the system were amended and recodified. See 49 USC § 14504(c). The Federal Highway Administration, under the Secretary of Transportation, adopted the ICC regulations that implemented the Single State Registration System, 61 Fed Reg 54706, 54707 (1996), and the Federal Motor Carrier Safety Administration now has authority to administer the system, 49 USC § 113(f)(1).

A

Plaintiffs argue that the federal statutory language is clear – a state may charge a maximum registration fee of $10 a vehicle to motor carriers engaged in interstate commerce, regardless of whether a motor carrier is registered in Michigan or another state. Plaintiffs acknowledge that MCL 478.7 reflects the mandate of § 11506 with regard to motor carriers registered out of state,[4] and asserts that motor carriers registered in Michigan are required to be charged similarly.

Defendants' counterargument is two-fold. First, § 11506 applies to registration fees only, not regulatory fees, and the interstate fee at issue is a regulatory fee. Second, the fee limit in § 11506 applies to participating states only, not the registration state. The court agreed with defendants' argument and granted summary disposition on this issue for the same reasons. Therefore, the key questions are (1) to whom does the fee limit in § 11506 apply, and (2) to what type of fees. The answers to these questions can be found in the language of the statute itself and the federal regulations that interpret it.

It is not an unreasonable burden on interstate commerce to require vehicles to register with a state; however,

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[4] MCL 478.7 provides, in part:

> (4) The annual fee levied on each interstate or foreign motor carrier vehicle operated in this state and licensed in another state or province of Canada shall be $10.00. The commission may enter into a reciprocal agreement with a state or province of Canada that does not charge vehicles licensed in this state economic regulatory fees or taxes and may waive the fee required under this subsection.

any registration requirements of a state that are in excess of the standards in subsection 11506(c) are considered an unreasonable burden. Subsection 11506(b). Under the SSRS, a motor carrier is required to register annually with only one state, and that registration satisfies the registration requirements of all the states. Subsection 11506(c)(1)(A). A motor carrier may only register with a participating state, a state which participated in the old "bingo card" system. Subsection 11506(c)(2)(D). The motor carrier must register with the state where its principal place of business is located, if it is a participating state, or else register with the participating state in which it operates the most vehicles. 49 CFR 367.3.[5] Therefore, a registration state, the state in which a motor carrier registers, is by definition a participating state. Michigan is a participating state, *Yellow Transportation, supra,* 123 S Ct 376; 154 L Ed 2d 385, and therefore, can be a registration state.

The registration state may require a motor carrier to (1) file proof of its federal registration (ICC permit), (2) file proof of insurance, (3) file the name of its agent for service of process, and (4) pay a fee. Subsection 11506(c)(2)(A). The registration state is then to issue the motor carrier a receipt, reflecting that proof of insurance was filed and that the fee was paid, a copy of which is to be kept in the carrier's vehicles. Subsection 11506(c)(2)(B). The fee is for the filing of the proof of insurance, and may not be charged for the filing of the motor carrier's ICC permit. Subsections 11506(c)(2)(B)(iv) and (v).

[5] 49 CFR 1023.1 *et seq.*, was recodified as 49 CFR 367.1 *et seq.*

In support of the registration fee, the motor carrier must file with the registration state a form that delineates (1) the number of vehicles it intends to operate in each participating state, (2) the fee each participating state charges each vehicle, (3) the total fee due each participating state, and (4) the total of all the fees due. 49 CFR 367.4(c)(4). The fee each participating state is allowed to charge each vehicle is equal to the amount the state charged or collected as of November 15, 1991, not to exceed $10. Subsection 11506(c)(2)(B)(iv)(III); 49 CFR 367.4(c)(4)(ii). Congress wanted to "minimize[] the costs of complying with the registration system" for the motor carriers, subsection 11506(c)(2)(B)(iv)(II), while at the same time preserving "revenues for the states which had participated in the bingo program," HR Conf Rep No 102-404 reprinted in 1991 USCCAN 1817. The fees a registration state collects on behalf of other participating states are remitted to those states monthly. 49 CFR 367.6. Thus, if a motor carrier registered in Michigan, it would first list the number of vehicles it operated in each participating state. Because Michigan is a participating state, it would need to list the number of vehicles it operated in Michigan. The fee Michigan could charge cannot exceed $10.

We find that the statutory language and its accompanying federal regulations are clear. A registration state is simply a participating state in which a motor carrier is registering. Therefore, when the statute states that a participating state may not charge a fee in excess of $10, this includes the registration state. To conclude otherwise, that a registration state could set its own fee, would contravene the express language and purpose of the statute.

The next question is whether the $100 fee in MCL 478.2(2) is a registration fee, so that it is subject to the limitation in § 11506, or whether it is a regulatory fee. Plaintiffs assert that the fee is for all practical purposes a registration fee. Because the fee must be paid at the time a motor carrier registers with a state, and in return for the fee receives an identification decal, plaintiffs contend that one can only conclude that the fee is, in actuality, a registration fee. We disagree. Faced with a similar situation in *Franks & Son, Inc v Washington,* 136 Wash 2d 737, 759-760; 966 P2d 1232 (1998), the Washington Supreme Court rejected the plaintiffs' argument that because the regulatory fee and federal identification fee were collected at the same time, an unlawful registration requirement resulted. The court adeptly stated, "We believe a more realistic rationale for concurrent collection of the two fees was administrative convenience and efficiency." *Id.* at 760.

We find that the $100 interstate fee could reasonably be classified as a regulatory fee because it is a fee imposed for the administration of the MCA, particularly covering costs of enforcing safety regulations.[6] If the purpose of a fee is to regulate an industry or service, it can be properly classified as a regulatory fee. *Bolt v Lansing,* 459 Mich 152, 161-162; 587 NW2d 264 (1998). Because the fee in

[6] Because vehicles licensed in Michigan that operate solely interstate are required to pay the $100 regulatory fee, the PSC waives the registration fee. *Schneider Nat'l Carriers, Inc v Michigan (On Remand),* 247 Mich App 716, 721; 637 NW2d 838 (2001). Hence, the registration fee Michigan charges for vehicles licensed in Michigan is $0, less than the $10 limit imposed by § 11506. Therefore, the registration fee is within the federal mandate.

MCL 478.2(2) is not a registration fee, it is not subject to preemption by 49 USC 11506.

Plaintiffs argue that the federal law prohibits construing the fee as a regulatory fee, citing *Roadway Express, Inc v Treasurer of State of Illinois,* 120 Ill App 3d 133; 458 NE2d 66 (1983). That case involved a $31 registration fee Illinois charged Ohio motor carriers. *Id.* at 133-134. At the time, the federal regulation allowed a maximum registration fee of $5 plus an additional reasonable fee imposed to defray the cost of the regulation of carriers within the state's borders. *Id.* at 135. Plaintiffs contend that *Roadway Express* "issued a warning" that "no such additional 'regulatory fee' was permissible after 1981" because the federal regulation interpreting § 11506 was amended in 1981 and set an absolute limit of $10 for identification fees. However, *Roadway Express* issued no such warning. The court merely noted, "again parenthetically," that the federal regulation, 49 CFR 1023.33 (redesignated), was amended and set the limit at $10. *Roadway Express, supra* at 135.

Plaintiffs appear to argue that because the amended federal regulation did not explicitly provide for an additional fee, one was hence prohibited. However, plaintiffs provide no support for their argument. Further, plaintiffs fail to recognize the import of two other regulations in existence at the time. 49 CFR 1023.105 (1991) (superseded) provided that the rules and regulations were not to be construed to affect the collection of taxes or fees by a state from motor carriers for the operation of vehicles within the borders of a state. 49 CFR 1023.104 (1991) (superseded) provided that states were "urged" to use fees collected for the purpose of defraying the cost of regulation of motor carriers within their borders. Therefore, the

ability of a state to collect fees in addition to the registration fees was not affected by the removal from § 1023.33 of the language providing for additional fees.[7]

B

Plaintiffs also argue that the interstate fee was prohibited before the creation of the SSRS in 1994, under the previous version of § 11506. Plaintiffs assert this argument because their complaint was filed in the beginning of 1995, and with a three-year period of limitation, plaintiffs contend that they are entitled to a refund for the excess fees they have paid since 1992.

Before the 1994 enactment of the SSRS, § 11506 read, in pertinent part:

> (b) The requirement of a State that a motor carrier . . . register the certificate or permit issued to the carrier under section 10922 or 10923 of this title is not an unreasonable burden on transportation referred to in section 10521(a)(1) and (2) of this title when the registration is completed under standards of the Commission under

[7] We note that the substance of 49 CFR 1023.104 and 1023.105 was not included in the 1994 amendments, 49 CFR 1023.1-1023.6. However, neither was there any express prohibition on state-imposed regulatory fees. The statute and its regulations address registration requirements only. Because there is a presumption against federal preemption, we believe that Congress's silence cannot be interpreted as prohibiting state regulatory fees, see *Wisconsin Pub Intervenor v Mortier*, 501 US 597, 607; 111 S Ct 2476; 115 L Ed 2d 532 (1991), particularly given that regulatory and registration fees can coexist in the same field without conflicting, *Duprey, supra* at 665.

> subsection (c) of this section. When a State registration requirement imposes obligations in excess of the standards, the part in excess is an unreasonable burden.
>
> (c)(1) The Commission shall maintain standards and amendments to standards (A) prepared and certified to it by the national organization of the State Commissions, and (B) prescribed by the Commission. . . .

The Commission prescribed the following interpretive regulation:

> The application for the issuance of such identification stamps or number shall . . . be duly completed and executed by an official of the motor carrier, and shall be accompanied by the fee, if any, prescribed by the law of such State; provided, however, that such fee shall not exceed $10 for the issuance of each such identification stamp; and provided further (when the State Commission assigns an identification number in lieu of issuing an identification stamp or stamps), that such fee shall not exceed $10 for each vehicle operated under the authority of the motor carrier identified in the cab card bearing such identification number. [49 CFR 1023.33 (superseded).]

The pre-1994 federal regulation substantively mirrored subsection 11506(c) as amended in 1994. Because we concluded that the interstate fee is a regulatory fee, it is outside the scope of the federal law and was not preempted.[8]

[8] We note that the cases from other jurisdictions that plaintiffs cite are inapplicable in this case. The conclusion in this case turns on

(Continued on following page)

Accordingly, the court did not err in granting defendants summary disposition.

IV

In their complaints, plaintiffs and intervening plaintiffs allege that the intrastate fees in MCL 478.1 and MCL 478.2(1) were preempted by § 601 of the FAAAA. Subsection 601(h), which became effective on January 1, 1995, prohibited state regulation of prices, routes, or services of motor carriers, save for a few delineated exceptions. (Currently codified as 49 USC 14501[c].)

Plaintiffs argue that the court erred in granting defendants summary disposition on this issue before discovery was complete.[9] Plaintiffs assert that they should have been allowed an opportunity to conduct additional discovery in order to show that, as utilized, the intrastate fees are prohibited by federal law.

In re Fed Preemption of Provisions of the Motor Carrier Act, 223 Mich App 288, 302; 566 NW2d 299 (1997), held that § 601 did not preempt the entire MCA and did not indicate an intent to preempt fee provisions such as MCL 478.1 and MCL 478.2. The Court noted that in response to the enactment of the FAAAA, the PSC "issued considered decisions that indicated how its regulation of the trucking industry in Michigan was affected by federal

whether the interstate fee is classified as a regulatory fee or a registration fee. In the cases plaintiffs cite, there was no disagreement that the fee at issue was a registration fee.

[9] We note that plaintiffs do not contest the court's summary-disposition ruling, that § 601 did not preempt the intrastate fees.

legislation preempting at least some aspects of state regulation." *In re Motor Carrier Act, supra* at 300. In regard to the fee provisions at issue, the Court stated:

> The PSC still has significant regulatory obligations. For example, the PSC must supervise and regulate the safety of motor carrier operations. MCL 479.41; MSA 22.587(1). There is still a certification process. It follows that the fees for obtaining a certificate of authority, MCL 478.1; MSA 22.560, for protesting an application for a certificate, MCL 478.1a; MSA 22.560(1), and for administering the act, MCL 478.2(1); MSA 22.561(1), are unaffected by the preemptive effect of § 601. In fact, *because the PSC is not using its resources to enforce preempted portions of the Motor Carrier Act, the fees collected by the PSC are not related to the preempted provisions and rules.* Indeed, appellants Central Transport and Universal Am-Can have not shown that the cost of the PSC's operations has ever been totally funded by the fees it collects, and they have not provided any reason to believe that the fees collected were or can be used only for what is now preempted economic regulation. [*Id.* at 302-303; emphasis added.]

Plaintiffs contend that the PSC intrastate fees were being used to fund preempted portions of the MCA, and, thus, the fees were related to a preempted provision. Therefore, the fees were also preempted. Plaintiffs did not submit any documentary evidence below in support of this contention. Plaintiffs argue that they had intended to do so, but their opportunity was foreclosed when the court denied their motion for partial stay and bifurcation of issues. Plaintiffs requested a 90- to 120-day stay in the proceedings to conduct discovery in order to present a

factual record to the court in a supplemental brief in response to the decision in *In re Motor Carrier Act, supra*; however, the court denied the motion without prejudice because it believed its summary-disposition ruling would cover the issue.

A court's decision regarding matters of discovery is reviewed on appeal for an abuse of discretion. *In re Pott*, 234 Mich App 369, 373; 593 NW2d 685 (1999). Plaintiffs could not address this Court's decision in *In re Motor Carrier Act, supra*, in their original motions for partial summary disposition because they were filed and argued in 1995, and the case was not decided until April 25, 1997. However, plaintiffs did not file their motion for partial stay and bifurcation of issues until March 1998, nearly one year later. The record indicates that plaintiffs were conducting discovery during this entire time, yet never sought evidence relating to this issue.

We find that plaintiffs had ample opportunity to conduct discovery following the decision in *In re Motor Carrier Act, supra*, and file a supplemental brief containing their findings. Given that one year had passed, we also find that there is no reason to believe that had plaintiffs been given another three or four months in which to conduct discovery, plaintiffs would have uncovered a factual basis for their claim. Furthermore, we note that by stipulation, discovery was to be completed 180 days after the court issued its ruling on the parties' motions for summary disposition.

Plaintiffs assert in their reply brief that they are not arguing that they were prevented from conducting discovery, but that they were denied an opportunity to supplement their motion papers. However, the court did not

foreclose plaintiffs' opportunity to present their argument. They could have filed additional briefs at any time before the court issued its ruling. In fact, on January 28, 1998, plaintiffs filed a supplemental brief in support of their motions for summary disposition and in opposition to defendants' motion, in which they specifically mentioned *In re Motor Carrier Act, supra*. This indicates plaintiffs were well aware of the import of the case, and could have conducted discovery and presented their argument accordingly. Plaintiffs mention that defendants did not submit the opinion as authority until January 1998. However, *In re Motor Carrier Act* was decided in April 1997, and nothing prevented plaintiffs from proactively distinguishing their case from it.

Moreover, the court specifically invited plaintiffs to present their argument again if they thought its ruling did not adequately cover the issue. Plaintiffs did file a motion for reconsideration after the court issued its orders on the parties' motions for summary disposition, yet did not reraise this issue. We recognize that plaintiffs renewed their motion to stay on October 8, 1998; however, this was before the court issued its ruling. Because the court had not yet issued its ruling, plaintiffs could have attempted to conduct discovery after its first motion was denied.

Therefore, we conclude that the court did not abuse its discretion in denying plaintiffs' request to stay the proceedings in order to conduct additional discovery. A decision of a court that obtained the correct result, albeit for a different reason, will be affirmed on appeal. *Lavey v Mills*, 248 Mich App 244, 250; 639 NW2d 261 (2001).

V

Plaintiffs Troy Cab, Inc., et al., allege that the intrastate fees in MCL 478.1 and MCL 478.2(1) are unconstitutional taxes in violation of various sections of the Michigan Constitution. The fees at issue are credited to the PSC. MCL 478.6. Whether a charge is a permissible fee or an illegal tax is a question of law. *Bolt, supra* at 158. A court's factual findings are reviewed for clear error. A finding is clearly erroneous when, although there is evidence to support it, upon reviewing the entire record, the appellate court is left with a definite and firm conviction that a mistake was made. *Christiansen v Gerrish Twp,* 239 Mich App 380, 387; 608 NW2d 83 (2000).

In determining whether a charge imposed by a unit of government is a fee or a tax, a court must consider: (1) whether the charge serves a regulatory purpose rather than operates as a means of raising revenue; (2) whether the charge is proportionate to the necessary costs of the service to which it is related; and (3) whether the payor has the ability to refuse or limit its use of the service to which the charge is related. *Bolt, supra* at 161-162. These factors should be considered in their totality, and a weakness in one area does not mandate a particular finding. *Id.* at 167; *Graham v Kochville Twp,* 236 Mich App 141, 151; 599 NW2d 793 (1999).

Taxes have a primary purpose of raising revenue, while fees are usually in exchange for a service rendered or a benefit conferred. *Bolt, supra* at 162. The stated purpose of the intrastate fees is for "the administration of [the MCA]." MCL 478.1; MCL 478.2(1). The express purposes of the act are

to confer upon the [PSC] the power and authority and to make it its duty to supervise and regulate the transportation of property by motor vehicle for hire upon and over the public highways of this state in all matters whether specifically mentioned herein or not, so as to: (a) Relieve all future undue burdens and congestion on the highways arising by reason of the use of the highways by motor vehicles operated by motor carriers; (b) protect and conserve the highways and protect the safety and welfare of the traveling and shipping public in their use of the highways; (c) promote competitive and efficient transportation services; (d) meet the needs of motor carriers, shippers, receivers, and consumers; (e) allow a variety of quality, price, and service options to meet changing market demands and the diverse requirements of the shipping public; (f) allow the most productive use of equipment and energy resources; (g) provide the opportunity for efficient and well-managed motor carriers to earn adequate profits and attract capital; (h) promote intermodal transportation; (i) prevent unjust discrimination; (j) promote greater participation by minorities in the motor carrier system; (k) provide and maintain service to small communities and small shippers; (l) prevent evasion of this act through any device or arrangement; (m) promote entrepreneurship in the motor carrier industry by allowing greater contract carrier economic and entry flexibility; and (n) promote the use of jointly considered and initiated rates, classifications, divisions, allowances,

charges, or rules of motor carriers under commission approved agreements. [MCL 475.2.[10]]

This language indicates the exactions are regulatory.

Taxes are designed to raise revenue for the general public, while a fee "confers benefits only upon the particular people who pay the fee, not the general public or even a portion of the public who do not pay the fee." *Graham, supra* at 151. In this case, in exchange for the fees, a motor carrier receives the right to operate its trucks in Michigan, and the fees are used to enforce the provisions of the act that carry out the above-listed purposes. Thus, there is a direct benefit to the one who pays the fees. We recognize that promoting and regulating safe use of the highways benefits the general public as well. However, a regulatory fee can have dual purposes and still maintain its regulatory characterization. As long as the primary purpose of a fee is regulatory in nature, the fee can also raise money provided that it is in support of the underlying regulatory purpose, *id.* at 151, and thus benefit the general public.

Plaintiffs' argument focuses on the second prong of the test, whether the fees are proportional to the cost of the services to which they relate. Plaintiffs assert that in 1982, when the fees were increased,[11] they became taxes because the amounts collected were in excess of the

[10] Any purposes that related to economic regulation were preempted by § 601 of the FAAAA as of January 1, 1995, and the PSC ceased to enforce those regulations. *In re Motor Carrier Act, supra* at 300. However, the Legislature has yet to amend the MCA to reflect the federal preemption.

[11] 1982 PA 399 raised the fees in MCL 478.1 and MCL 478.2(1) to their current levels.

expenses related to the services. A fee must be proportionate to the cost of the regulation, but its amount is presumed reasonable unless its unreasonableness is established. *Id.* at 151. "[W]here revenue generated by a regulatory 'fee' exceeds the cost of regulation, the 'fee' is actually a tax in disguise." *Gorney v Madison Hgts,* 211 Mich App 265, 268; 535 NW2d 263 (1995).

In support of their contention, plaintiffs presented two affidavits and a senate fiscal report. We find the affidavits of minimal value in determining whether the fees are unreasonable. Neither of the affiants worked for the PSC and they could only offer their opinion regarding how the fees were spent. The senate fiscal report, created by a senate fiscal analyst, showed how the funds received by the PSC were utilized for fiscal years 1982-83 to 1994-95,[12] and one of the charts showed that there was a surplus nearly every year.[13]

[12] Plaintiffs also assert that the report shows that the fees supported activities not related to the regulation of motor carriers because a portion was allocated to the State Police, Department of Commerce, and Department of Civil Service. However, it is the duty of the police to assist the PSC in enforcement of the MCA, MCL 479.13, and the Department of Commerce provides administrative support to the PSC that enables it to carry out its duties. It follows that the PSC would allocate a portion of the fees to them. In addition, the allocation of a very small portion of the PSC's revenues to the Department of Civil Service is mandated by the Legislature in accordance with the constitution to fund the civil service. Const 1963, art 11, § 5. The allocations to this department averaged only $23,000 each year when revenues ranged from $3.2 to $6.3 million.

[13] Plaintiffs present no evidence regarding the proportionality of the fees after 1995, when the PSC ceased any economic regulatory functions as mandated by § 601 of the FAAAA. Therefore, we have no basis on which to determine the proportionality of the fees after 1995.

However, defendants dispute the accuracy of the figures in the report. Defendants note that charts reflect the total fees collected, not just the fees collected pursuant to MCL 478.1 and MCL 478.2(1), and defendants got confirmation from the author of the report that appropriations to the Michigan Truck Safety Fund were not considered. Therefore, defendants contend that the excess amounts were distorted.

It is clear that the report on which plaintiffs rely included all fee revenues without excluding nonchallenged interstate fees collected pursuant to the SSRS and its predecessor system. Therefore, the surplus figures were distorted to some degree. Even without reducing the surplus figures, the aggregate excess during the thirteen years was only 11.7 percent, a relatively small percentage. The test is whether the fee is proportional, not whether it is equal, to the amount required to support the services it regulates. *Graham, supra* at 151. We conclude that the Court of Claims did not clearly err in finding that the fees were not "wholly disproportionate."

Lastly, plaintiffs argue that the exaction is not voluntary because a motor carrier cannot operate its trucks in Michigan without paying it. Defendants argue that a motor carrier has a choice with regard to what extent its trucks will have a presence in Michigan, and, therefore, the exaction is voluntary. While this is true in regard to the application fee, MCL 478.1, defendants' logic is erroneous in regard to the administration fee, MCL 478.2(1), because every vehicle licensed in Michigan must pay this fee irrespective of where it operates. Even if we were to view the exaction as more compulsory than voluntary, when the totality of factors are considered, we believe the exactions are most properly classified as regulatory fees.

Bolt, supra at 167; *Graham, supra* at 151. Therefore, the court did not err in granting defendants summary disposition on this issue.

VI

Plaintiffs next argue that the intrastate and interstate fees violate the Equal Protection Clause of the United States and Michigan Constitutions because they apply to "for-hire" motor carriers only and not to private motor carriers.[14] Both the federal and state constitutions guarantee equal protection, and afford similar protection. Const 1963, art 1, § 2; US Const, Am XIV, § 1; *Vargo v Sauer,* 457 Mich 49, 60; 576 NW2d 656 (1998). A court's ruling whether a statute violates equal protection is a question of law. *McDougall v Schanz,* 461 Mich 15, 24; 597 NW2d 148 (1999).

Legislative classifications that do not implicate a fundamental right or target a suspect class are presumed to be constitutional if they have a rational basis, and one who challenges such a statute has the burden of showing that it bears no rational relation to some independent and legitimate legislative end. *TIG Ins Co, Inc v Dep't of Treasury,* 464 Mich 548, 557; 629 NW2d 402 (2001); *Vargo, supra* at 60. Under the rational-basis test, a statute will ordinarily be sustained if it can be said to advance a legitimate governmental interest, even if the law seems to be unwise or works to the disadvantage of a particular

[14] Because we concluded that the fees are regulatory, plaintiffs additional argument, that the fees violate Michigan's Uniform Taxation Clause, is without merit.

group, or if the rationale seems to be tenuous. *People v Copper (After Remand)*, 220 Mich App 368, 372-373; 559 NW2d 90 (1996). A legislative classification may not be set aside if any set of facts may reasonably be conceived to justify it. *Id.* at 373.

Before 1994, the fees were used to fund the economic- and safety-regulation of motor carriers. Motor carriers do not include private carriers. MCL 475.1(i). A private carrier is "any person engaged in the transportation of property by motor vehicle upon public highways where the transportation is incidental to, or in furtherance of, any commercial enterprise of the person, other than transportation." MCL 475.1(q). A "for hire" motor carrier is one that receives "remuneration or reward of any kind, paid or promised, either directly or indirectly." MCL 475.1(e). Thus, "for hire" motor carriers are engaged in the business of transportation.

The rationale behind the classification distinction may be supported by facts either known or reasonably assumed, even if those facts may be debatable. *TIG Ins, supra* at 557, citing *Crego v Coleman*, 463 Mich 248, 259-260; 615 NW2d 218 (2000). We believe it is reasonable to assume that motor carriers have larger fleets than private carriers, operate under competitive pressures, and operate more frequently than private carriers. We can surmise that these carriers are in need of being more closely scrutinized in order to protect the general public, which also uses the public highways; thus, the need for regulations and fees to cover their enforcement.

Even after economic regulation of the motor carriers ceased, as *In re Motor Carrier Act, supra* at 302, recognized, the PSC "still has significant regulatory obligations,"

including supervising and regulating the safety of motor-carrier operations, as well as the certification process. Therefore, the need for fees to support such regulations were not eliminated after the FAAAA was enacted. The same concerns that existed before still existed. Accordingly, we conclude that the Legislature's classification bore a rational relation to a legitimate state purpose, and the court did not err in granting defendants summary disposition.

VII

Finally, intervening plaintiffs argue that the intrastate fee imposed by MCL 478.2(1) violates the Commerce Clause because it burdens interstate commerce. Again, we disagree, but for a different reason than stated by the Court of Claims.

The Commerce Clause provides that Congress "shall have power . . . [t]o regulate commerce . . . among the several states. . . ." US Const, art I, § 8, cl 3. The "dormant Commerce Clause" "denies the States the power unjustifiably to discriminate against or burden the interstate flow of articles of commerce." *Oregon Waste Systems, Inc v Dep't of Environmental Quality of the State of Oregon*, 511 US 93, 98; 114 S Ct 1345; 128 L Ed 2d 13 (1994).

The Court of Claims held that the Commerce Clause was not implicated because the fee applied to intrastate carriers only. However, any tax or regulation that affects interstate travel, even if imposed solely on intrastate commerce, is subject to Commerce Clause analysis. *Citizens for Logical Alternatives & Responsible Environment v Clare Co Bd of Comm'rs*, 211 Mich App 494, 499; 536 NW2d 286 (1995). Because the fee is imposed on any

vehicle that operates intrastate pursuant to a certificate of authority, even if it also travels interstate, the fee affects interstate commerce, and thus, implicates the dormant Commerce Clause. Although the Court of Claims did not address this issue, our review is nevertheless proper because whether a statute violates the Commerce Clause is a question of law. *Gillette Co v Dep't of Treasury*, 198 Mich App 303, 311; 497 NW2d 595 (1993).

"A statute is presumed constitutional absent a clear showing to the contrary." *Caterpillar, Inc v Dep't of Treasury*, 440 Mich 400, 413; 488 NW2d 182 (1992). The test for determining whether a regulatory fee violates the Commerce Clause involves a two-tiered approach.[15] The first step is to determine whether the statute discriminates against interstate interests or merely regulates evenhandedly with only incidental effects upon interstate commerce. *Oregon Waste, supra* at 99. "'[D]iscrimination' simply means differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter." *Id.* The United States Supreme Court has recognized that there is no clear line separating the two categories. The critical consideration is the overall effect of the statute on both local and interstate activity. *Brown-Forman Distillers Corp v New York State Liquor Auth*, 476

[15] Intervening plaintiffs contend that the four-pronged test enunciated in *Complete Auto Transit, Inc v Brady*, 430 US 274, 279; 97 S Ct 1076; 51 L Ed 2d 326 (1977), and utilized in *American Trucking Ass'ns, Inc v Scheiner*, 483 US 266, 283; 107 S Ct 2829; 97 L Ed 2d 226 (1987), is applicable. However, this test is used to analyze the constitutionality of state-taxation statutes that tax interstate commerce itself, i.e., taxes for the privilege of doing business in the state, *Complete Auto, supra* at 279, not regulatory statutes.

US 573, 579; 106 S Ct 2080; 90 L Ed 2d 552 (1986). A state law will be invalidated if it "discriminate[s] against an article of commerce by reason of its origin or destination out of State." *C & A Carbone, Inc v Town of Clarkstown, New York*, 511 US 383, 390; 114 S Ct 1677; 128 L Ed 2d 399 (1994).

In making this determination, we must consider all the provisions of the challenged statute. MCL 478.2(1) requires that motor carriers that are licensed in Michigan and travel solely intrastate or travel both intrastate and interstate, a "mixed" carrier, must pay a fee of $100 for each vehicle. MCL 478.2(2) requires that motor carriers that are licensed in Michigan and travel solely interstate must also pay the $100 fee. Therefore, the regulatory fee is the same for all motor carriers licensed in Michigan, regardless of their final destination. It does not directly regulate interstate commerce, *Pike v Bruce Church, Inc*, 397 US 137, 142; 90 S Ct 844; 25 L Ed 2d 174 (1970), nor is economic protectionism at issue, *Arkansas Electric Coop Corp v Arkansas Pub Service Comm*, 461 US 375, 394; 103 S Ct 1905; 76 L Ed 2d 1 (1983).

Defendants assert that the majority of vehicles that pay the fee operate solely intrastate, which presumably leads to their conclusion that the effect on interstate commerce is minimal. However, the number of interstate vehicles burdened is inconsequential to a finding of discrimination. *New Energy Co of Indiana v Limbach*, 486 US 269, 276-277; 108 S Ct 1803; 100 L Ed 2d 302 (1988).

Intervening plaintiffs argue that the mixed carrier invariably will pay a higher per-mile fee than the carrier who operates solely intrastate. They assert that because the fee is a flat annual fee, in order to receive the greatest

benefit for the fee, a carrier would need to maximize its intrastate operations and this could potentially affect a carrier's economic decisions by discouraging an intrastate carrier from engaging in interstate commerce.

While this may be so, it is a matter of pure speculation. Intervening plaintiffs present no evidence that any trucking firm's route choices are affected by the imposition of the fee, only surmising that this could occur in the hypothetical. Only one affidavit was submitted by intervening plaintiffs, in which James Crozier, manager of licensing and fuel for intervening plaintiff TNT Holland Motor Express, Inc., stated that mixed carriers often top off their interstate loads with intrastate hauls or transport intrastate loads in between interstate hauls. However, he never averred that this was done only because of the fee imposed by MCL 478.2(1). Regardless of the $100 fee, topping off loads or adding intrastate hauls in between interstate ones is an economically efficient decision for the motor carriers. We do not find that the fee raises a significant barrier to participation in interstate trade. Any effect the fee has on interstate commerce is incidental and does not rise to the level of discrimination.

Having concluded that the statute regulates evenhandedly, it will be upheld unless the burden it imposes on interstate commerce is "clearly excessive in relation to the putative local benefits." *Pike, supra* at 142. Intervening plaintiffs do not contest that the statute serves a legitimate nondiscriminatory purpose, i.e., funding safety and related regulations. This is an exercise of the state's police power and serves a critical function in protecting the people who use Michigan's highways. Great deference is given to state legislation in the field of highway safety regulation and a strong presumption in favor of its validity

exists. *Raymond Motor Transportation, Inc v Rice,* 434 US 429, 443; 98 S Ct 787; 54 L Ed 2d 664 (1978). On the basis of the record before us, we cannot say that the burden imposed on interstate commerce by the $100 annual fee is clearly excessive in relation to Michigan's substantial interest in regulating safety on its highways. Therefore, we hold that MCL 478.2(1) does not violate the Commerce Clause. Accordingly, we affirm the Court of Claims' summary-disposition ruling in favor of defendants even though it reached its decision for the wrong reason. *Lavey, supra* at 250.

Affirmed.

/s/ Michael R. Smolenski
/s/ Jane E. Markey
/s/ Henry William Saad